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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Kingdom of Bahrain

1. Introduction: Overview of the legal and institutional framework of the Kingdom of Bahrain in the context of implementation of the United Nations Convention against Corruption

The Kingdom of Bahrain signed the Convention on 8 February 2005, and the King of Bahrain ratified it on 4 February 2010. The Kingdom of Bahrain deposited its instrument of ratification with the Secretary-General of the United Nations on 5 October 2010.

Article 37 of the Constitution provides that the generally accepted rules of international law and international conventions that are ratified by law and come into force shall be an integral part of the domestic law of the Kingdom of Bahrain and prevail over any provisions of domestic law that contradict them.

The courts are divided into criminal and civil courts of two levels, first instance and appeal, above which operates the Court of Cassation. The judicial system also includes the Constitutional Court. Criminal procedure follows an inquisitorial system consisting of two phases: investigation and trial.

Bahrain has several anti-corruption agencies, most notably the General Directorate for Combating Corruption and for Economic and Electronic Security, which is part of the Ministry of the Interior and consists of a number of directorates, including the Directorate for Combating Corruption Offences and the Financial Investigations Unit. Moreover, the public prosecution service plays a leading role in the fight against corruption.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Articles 186 to 189 of the Criminal Code make it an offence for a public official or public servant to solicit or accept a bribe. Articles 191 and 192 establish additional penalties.

Article 190 of the Criminal Code criminalizes the offering or promising of a bribe to a public official or public servant who does not accept the offer or promise. If the offer or promise is accepted, the articles criminalizing acceptance of a gift by a public official apply. The briber and the intermediary are punishable as accomplices to the offence pursuant to the general provisions on participation contained in articles 44 and 45 of the Criminal Code.

Article 190 bis of the Criminal Code criminalizes the bribery of a public official or public servant by a foreign State, but this does not include bribery of an official of a public international organization.

Bahrain also criminalizes the seeking or acceptance of a bribe by a foreign public official under article 190 bis read together with article 44 of the Criminal Code. Those provisions do not apply to officials of public international organizations.

Moreover, article 44 does not apply where a foreign public official has solicited but not obtained a bribe.

Article 202 of the Criminal Code criminalizes the solicitation or acceptance by a public official of any undue advantage in return for exercising his influence, but does not cover "any other person". In such cases, a person who has offered a bribe has, in so doing, committed an offence under the provisions of articles 44 and 45 of the Criminal Code (participation) read together with article 202, but only if the offer is accepted.

The Kingdom of Bahrain establishes as an offence the promise, offer or giving of a bribe in the private sector under articles 421 and 422 of the Criminal Code. It also establishes criminal liability for the solicitation or acceptance of bribes in the private sector under articles 418, 419 and 420 of the Criminal Code.

Money-laundering, concealment (arts. 23 and 24)

The Kingdom of Bahrain criminalizes laundering of the proceeds of crime under article 2 of Legislative Decree No. 4 of 2001 on the prevention and prohibition of money-laundering and financing of terrorism, as amended by Act No. 25 of 2013. However, that article does not expressly criminalize concealment of the true nature, source, location, means of disposal, movement, ownership of or rights with respect to property in the knowledge that such property constitute the proceeds of crime. The provisions of the Criminal Code on attempt and participation apply to that offence.

Predicate offences include all offences punishable by law in Bahrain, in addition to a list of offences including bribery, embezzlement, damage to public property, abuse of office or influence and illicit enrichment. Predicate offences include offences that take place within or outside the Kingdom, without the requirement of dual criminality. Self-laundering is not excluded.

Article 398 of the Criminal Code criminalizes "the concealment of things obtained through crime".

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Articles 194 to 201 of the Criminal Code deal with the offences of "embezzlement of and damage to public property".

Although there is no specific offence of abuse of functions by a public official, chapter III of the Criminal Code deals with "abuse of office or influence" (articles 202-206) and chapter IV with "misuse of office or influence" (article 207 to 213) and several aspects of such conduct can be described as "abuse of functions".

The Kingdom of Bahrain criminalizes illicit enrichment under articles 6, 9 and 11 of Act No. 32 of 2010 on financial disclosure.

The Kingdom of Bahrain criminalizes embezzlement of property in the private sector under articles 424 and 425 of the Criminal Code.

Obstruction of justice (art. 25)

Article 238 of the Criminal Code establishes as an offence the act of using coercion or threats or offering or promising a gift or advantage of any kind in order to induce another not to testify or to testify falsely where the offender fails to achieve his or her intended objective. If the offender does achieve his or her objective, those actions are punishable under article 363 in the case of threats by any means, including the use of physical force, and under article 235, read together with article 44, paragraph 1, of the Criminal Code in relation to incitement in the case of the offer or promise of a gift or advantage.

Bahraini legislation does not, however, criminalize the use of physical force, threats or intimidation or the promise, offer or giving of an undue advantage to induce the giving of evidence in proceedings related to an offence established in accordance with the Convention.

Article 220 of the Criminal Code criminalizes the use of force, violence or threats to interfere with an official's conduct of his or her work.

Liability of legal persons (art. 26)

Bahraini legislation does not provide for the criminal liability of legal persons except in the case of the offence of money-laundering, nor has Bahrain established the civil and administrative liability of legal persons with respect to participation in an offence established in accordance with the Convention.

Under Bahraini legislation, legal persons are not liable for participation in an offence established in accordance with the Convention, except in relation to money-laundering offences.

Participation and attempt (art. 27)

Criminal participation is covered by articles 43, 44 and 45 of the Criminal Code, and attempt by articles 36 to 40. Attempt is punishable with respect to felonies, but not with respect to misdemeanours except in cases prescribed by law. This prevents the punishment of attempt to commit certain corruption offences, such as offering a bribe to a public official that is not accepted (article 190) and offering a bribe to a foreign public official (article 190 bis).

Bahraini law does not punish acts preparatory to the commission of an offence.

Knowledge, intent and purpose as elements of an offence (art. 28)

Article 253 of the Code of Criminal Procedure provides for the freedom of the judge in ruling on a case, which allows the judge to infer from objective factual circumstances the presence of the element of knowledge, intent or purpose.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Bahrain has adopted penalties for corruption offences ranging from three months' to fifteen years' imprisonment, depending on the gravity of the offence. Immunities do not seem to constitute an impediment to the effective prosecution of such offences.

Members of the Consultative Council and the Council of Representatives enjoy immunity, except in cases where they are discovered in the act of committing an offence (article 89 (c) of the Constitution). When those bodies are in session, no criminal proceedings may be brought against a member without the permission of the council of which he or she is a member. In periods between sessions, the permission of the President of the Council must be sought. Unless he or she is discovered in the act of committing an offence, a judge may be arrested and detained only after permission has been obtained from the Supreme Judicial Council at the request of the Prosecutor General (article 43 of Legislative Decree No. 42 of 2002 promulgating the Judicial Authority Act).

Bahrain has adopted the principle of legality.

Detention pending trial is possible in the case of corruption offences. Release pending trial is possible with or without bail, after the accused has designated a place of residence in which he will reside. The individual may also be requested to present himself at the police station at prescribed times. All persons sentenced to imprisonment may be released on parole after serving three quarters of their sentence and performing all financial obligations.

A public official may be suspended from his or her duties for a period not exceeding six months if the interests of an investigation concerning him or her so require. Moreover, any public official placed in preventive detention is suspended from his or her duties while he or she is detained. Bahrain does not provide measures for the removal or transfer of an accused public official.

The Criminal Code establishes the penalty of disqualification and deprivation of the right to hold public office. The legal system of Bahrain does not, however, provide for the disqualification of persons convicted of acts of corruption from holding office in an enterprise owned in whole or in part by the State.

In cases of corruption, disciplinary sanctions may be imposed under articles 22-24 of the Civil Service Act, in addition to criminal sanctions.

While Bahrain does not have dedicated follow-up programmes for convicted persons after release with a view to social reintegration, such persons are required, during their imprisonment, to undertake work to facilitate their social rehabilitation. Moreover, after a certain period has elapsed following completion of their sentence, convicted persons may request rehabilitation.

Bahrain has not adopted measures to grant immunity from prosecution to perpetrators of offences who cooperate with the judicial authorities, although such cooperation may be taken into account in bribery and money-laundering cases, in which persons who cooperate with those authorities may benefit from commutation or remission of sentence if they report an offence to the authorities before it is carried out (article 193 of the Criminal Code and article 3 of the Money-Laundering Act). Except in money-laundering cases, there is no requirement to provide the competent authorities with factual, specific assistance that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. Bahrain has prepared a draft law on the subject of settlements in corruption cases.

Persons who cooperate with the judicial authorities can benefit from the protection provided for under article 127 bis of the Code of Criminal Procedure.

Bahrain may enter into agreements to provide for the possibility of commutation or remission of sentence in the case of persons who cooperate with the judicial authorities and who are located abroad.

Protection of witnesses and reporting persons (arts. 32 and 33)

Article 127 bis of the Code of Criminal Procedure establishes a number of measures to protect victims, witnesses and persons who provide information relating to a case, including change of residence, change of identity and prohibition of the disclosure of any information concerning the identity, whereabouts or place of residence of protected persons.

The Code of Criminal Procedure provides for a set of rules on the submission of evidence that are designed to guarantee the safety of witnesses and persons with information concerning a case, including the possibility of using modern audiovisual media in order to ensure the conditions necessary for their protection.

Bahrain may also conclude agreements on change of residence.

The Code of Criminal Procedure also allows the possibility of submission of the views and concerns of victims through the use of modern technical means.

Bahraini legislation does not provide legal protection for whistleblowers.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 64 of the Criminal Code provides for the possibility of confiscating the proceeds of crime and things that were or may have been used in the commission of an offence. Confiscation must be based on a conviction. Bahraini law allows confiscation on the basis of value. It does not explicitly provide for the possibility of seizure and confiscation of property into which the proceeds of crime have been transformed or converted or property that has been intermingled with the proceeds of crime up to the assessed value of the intermingled proceeds.

With regard to money-laundering, the law provides for the confiscation of money that is the subject of the offence or any money owned by the convicted person or his or her spouse or minor children equal in value to the money that is the subject of the offence. However, the law does not provide for the freezing, seizure and confiscation of proceeds or other assets derived from the proceeds of crime.

Articles 89 to 103 of the Code of Criminal Procedure and articles 6 and 7 of Legislative Decree No. 4 of 2001 on the prevention and prohibition of money-laundering provide for a wide range of investigative measures and tools for the identification, tracing, freezing and confiscation of the proceeds of crime.

Under article 99 of the Code of Criminal Procedure, the High Criminal Court may, when it issues an order to seize funds, appoint a person to administer the seized funds. However, reliance on the general provisions relating to the agent as provided for in the Civil Code is in practice inadequate with respect to complex property management (stocks, companies, etc.).

Bahraini legislation does not regulate the administration of confiscated funds.

Access to or seizure of banking, financial or commercial records may be requested on the authorization of the judge of the court of first instance.

Article 6 of Act No. 32 of 2010 on financial disclosure deals with the burden of proof with respect to the offence of illicit enrichment.

The Code of Criminal Procedure and the Money-Laundering Act provide for protection of the rights of bona fide third parties.

Banking secrecy does not seem to be an obstacle to criminal investigations since it may be lifted pursuant to the provisions of law or the international conventions to which the Kingdom is a party, or pursuant to an order issued by a competent court or in implementation of an order issued by the Central Bank (article 117 of the Central Bank of Bahrain and Financial Institutions Act; article 7 of the Money-Laundering Act).

Statute of limitations; criminal record (arts. 29 and 41)

Article 18 of the Code of Criminal Procedure establishes a statute of limitation of 10 years for felonies, three years for misdemeanours and one year for minor offences from the day on which the offence took place. The statute of limitations period for the offence of embezzlement in the public sector does not begin until the date on which a public official leaves his post, unless the investigation has begun before that date. Article 3 of Legislative Decree No. 4 of 2001 stipulates that the provisions on the statute of limitations do not apply to money-laundering offences. The statute of limitations period for illicit enrichment offences runs only from the date on which the person who has left an office or position submits his or her financial disclosure report.

The statute of limitations period is not suspended if the accused evades the administration of justice. However, it is interrupted by investigation, indictment or trial and by evidence-gathering procedures.

Under article 12 of the Criminal Code, final criminal convictions handed down by foreign courts may be invoked, including to apply the provisions on recidivism, multiple offences and parole.

Jurisdiction (art. 42)

The Kingdom of Bahrain has established its jurisdiction with respect to most of the situations referred to in article 42, with the exception of corruption offences committed abroad by a stateless person who has his or her habitual residence within its territory and corruption offences committed against the Kingdom of Bahrain or against its nationals.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Bahrain has taken measures to address the consequences of corruption, including the possibility for the Tender Board to annul or rescind a purchase contract if a supplier or contractor has influenced the outcome of a tender by offering bribes and inducements to any employee of the purchasing body, the Board or any governmental entity (articles 55 and 65 of the Legislative Decree regulating tenders and government procurement).

Paragraphs 158, 160 and 161 of the Civil Code provide for civil liability for damage. Articles 22 and 32 of the Code provide that the accused may be sued during

investigation or the collection of evidence or before the court hearing the criminal case.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

In 2011, Bahrain raised the organizational level of the Directorate for Combating Economic Crimes, part of the Ministry of the Interior, to that of General Directorate for Combating Corruption and for Economic and Electronic Security. The General Directorate comprises the Directorate for Combating Corruption, the Directorate for Combating Cybercrime, the Directorate for Combating Economic Crime, the Financial Investigations Directorate, the Research and Investigation Directorate and the International Affairs and INTERPOL Directorate. The General Directorate's work is not restricted to criminal matters but also includes prevention and the operation of a national hotline for the confidential reporting of corruption.

The structure consisting of the various law enforcement agencies and criminal justice institutions, linking police agencies with the prosecution authorities, appears to work effectively, especially since referral to public prosecution takes place electronically. It also appears that these authorities are given adequate training, resources and independence.

With regard to cooperation between the national authorities, article 48 of the Code of Criminal Procedure and article 230 of the Criminal Code require all public officials and persons in public service immediately to report the commission of an offence that comes to their knowledge in the course or as a result of the performance of their duties.

Moreover, the Money-Laundering Act requires a number of private sector entities, including banks, financial institutions, insurance companies, auditors and lawyers, to inform the Financial Investigations Unit of any suspicious operation, and to provide any additional information or assistance requested by the Unit. The Unit has also participated in training and awareness activities for private-sector entities.

The Kingdom of Bahrain has also set up three hotlines for the reporting of corrupt practices, guaranteeing the confidentiality of information and data relating to whistleblowers.

It conducts national media campaigns every year on International Anti-Corruption Day. Financial rewards are given to anyone who cooperates and reports corruption.

2.2. Successes and good practices

Overall, the highlights of the successes and good practices in the implementation of chapter III of the Convention are:

- The statute of limitations provisions are not applied to money-laundering offences (article 29)
- In the case of illicit enrichment offences, the statute of limitations period runs only from the date on which the financial disclosure report is submitted after the official concerned has left his or her office or position (article 29)
- In the case of offences relating to embezzlement and damage to property that are committed by public officials or public service employees, the statute of limitations period runs only from the date on which the persons leaves office

or his or her mandate ends, unless the investigation of the offence has begun before that date (article 29)

- The use of modern technology to link the public prosecution service to police stations electronically, which accelerates investigation procedures and referral and facilitates follow-up and the extraction of statistics.

2.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, the Kingdom of Bahrain may wish to:

- Criminalize bribery of officials of public international organizations (article 16, paragraph 1)
- Consider establishing as an offence the unsuccessful solicitation by a foreign public official of a bribe and the solicitation or acceptance of a bribe by an official of a public international organization (article 16, paragraph (a))
- Consider establishing as an offence the promise, offering or giving to a public official of an undue advantage in order that the official abuse his or her influence, even where the promise, offer or giving is not accepted by the public official. In addition, Bahrain may wish to consider criminalizing the promise, offering or giving of an undue advantage to "any other person" to whom the definition "public official" does not apply in order that that person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage (article 18, paragraph (a))
- Consider criminalizing the solicitation or acceptance by "any other person" to whom the definition "public official" does not apply of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage (article 18, paragraph (b))
- Consider making "abuse of functions" a specific offence, given that several forms of abuse of functions have been criminalized (article 19)
- Explicitly criminalize the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, in the knowledge that such property is the proceeds of crime (article 23, paragraph (a)(ii))
- Explicitly criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with the Convention (article 25, paragraph (a))
- Establish the (criminal, civil or administrative) liability of legal persons also in cases other than laundering of the proceeds of crime and make such legal persons subject to effective, proportionate and dissuasive criminal or non-criminal sanctions when they participate in the criminal offences established in accordance with the Convention (article 26, paragraphs, 1, 2 and 4)

- Criminalize any attempt to offer a bribe to a public official where the bribe is not accepted or to offer a bribe to a foreign public official (article, 27, paragraph 2)
- Criminalize acts preparatory to the commission of an offence (article 27, paragraph 3)
- Consider establishing procedures through which a public official accused of a corruption offence may be removed or reassigned (article 30, paragraph 6)
- Consider establishing procedures through which persons convicted of corruption offences may be disqualified from holding office in an enterprise owned in whole or in part by the State (article 30, paragraph 7 (b))
- Endeavour to take additional measures to promote the reintegration into society of persons convicted of corruption offences (article 30, paragraph 10)
- Improve regulation of the administration of frozen or seized property and take measures to regulate the management of confiscated property (article 31, paragraph 3)
- Consider making explicit provision for the seizure and confiscation of property that has been transformed or converted from the proceeds of crime or property that has been intermingled with the proceeds of crime up to the assessed value of the intermingled proceeds (article 31, paragraphs, 4 and 5)
- Amend Bahraini legislation to include the possibility of seizure and confiscation of income and benefits derived from the proceeds of crime. (Article 31, paragraph 6)
- Consider extending the possibility of reversing the burden of proof with regard to the lawful origin of property to cases other than those relating to illicit enrichment (article 31, paragraph 8)
- Consider taking the measures necessary to provide any person who reports corruption with protection against any unjustified treatment (article 33)
- Take further measures to encourage persons who participate or have participated in the commission of an act of corruption to provide useful information to the competent authorities for investigation and prosecution, and to provide specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and recovering such proceeds (article 37, paragraphs 1 and 2)
- Establish its jurisdiction over corruption offences committed abroad by a stateless person who has his or her habitual residence within its territory and corruption offences committed against the Kingdom of Bahrain or its citizens.

3. Chapter IV: International cooperation

Bahrain has a comprehensive system to combat corruption through international cooperation. However, it is difficult to assess in detail the provision by Bahrain of mutual legal assistance in corruption cases owing to a lack of relevant data.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

There is no separate law on extradition in Bahrain, but this issue is regulated by the provisions of the Code of Criminal Procedure on the extradition of suspects and convicted persons and on letters rogatory, in addition to the provisions of the bilateral and multilateral agreements in force.

Extradition proceedings in Bahrain include a judicial procedure and an administrative procedure.

Extradition requests are submitted through diplomatic channels for transmission to the Ministry of Justice. The High Criminal Court has jurisdiction over extradition requests and whether they meet the required conditions and comply with the relevant procedures. The High Criminal Court issues a reasoned judgement on the extradition request and communicates it to the Minister of Justice. The Minister issues a decision to extradite or not to extradite.

Extradition may be carried out regardless of the existence of an extradition treaty, provided that the requirements of the Code of Criminal Procedure, including the requirement of dual criminality, are fulfilled. Nevertheless, Bahrain considers the Convention a legal basis for extradition.

Extradition is not possible in the absence of dual criminality.

The offences for which extradition is permitted are those punishable by imprisonment for at least one year, or those in connection with which the person whose extradition is sought has been sentenced to at least six months' imprisonment.

The offences provided for in the Convention against Corruption may be considered as a basis for extradition if the conditions relating to dual criminality and the minimum period of imprisonment are met. Those offences have been criminalized in Bahrain (with the exception of the offences set forth in article 16, paragraph 1, and article 25 (a)), since they are punishable by at least one year's imprisonment.

The fact that an offence involves financial matters does not constitute a ground for refusal of a request for extradition.

Bahrain does not consider any act of corruption to be political.

Bahrain has not taken sufficient measures to expedite extradition procedures and to simplify evidentiary requirements concerning them.

Bahrain recognizes the principle of *aut dedere aut judicare* ("extradite or prosecute"), but that principle is not set out in its legislation. Bahrain does not extradite its own citizens.

Bahrain may detain a person whose extradition is sought under the provisions of article 421 of the Code of Criminal Procedure. The Constitution and the Code of Criminal Procedure establish guarantees of fair treatment which are applicable to extradition proceedings.

A person who is to be extradited may lodge an appeal to the court that issued the extradition order to review the extradition request in the light of new facts, or

appeal to the Minister of Justice, after he or she has been informed of the court's decision.

Bahraini legislation does not provide for the implementation of criminal judgements issued by foreign courts, with the exception of implementation of ancillary penalties which have civil effect.

The authorities also indicated that, in practice, consultations with the requesting State take place before a request is refused.

Bahrain has concluded several extradition treaties.

Bahrain has also concluded several bilateral and regional treaties on the transfer of sentenced persons.

Although the Kingdom applies the general principle of wide-ranging cooperation and has already requested the transfer of proceedings in one case of money-laundering, it does not have a procedural framework regulating the process of transferring criminal proceedings.

Mutual legal assistance (art. 46)

There is no separate law on mutual legal assistance in Bahrain; this issue is governed by the provisions contained in the Code of Criminal Procedure on the extradition of suspects and convicted persons and on letters rogatory, in addition to the provisions of the bilateral and multilateral agreements in force. The provisions of the Convention may also be applied directly to obligations with respect to mutual legal assistance.

The central authority responsible for mutual legal assistance is the Ministry of Justice. Bahrain accepts requests submitted in Arabic and English, but the Secretary-General of the United Nations has not been notified of this.

Requests are sent through diplomatic channels and referred to the High Criminal Court through the Ministry of Justice. In case of urgency, the request may be made through direct communication, even orally, between the competent judicial authorities, pending receipt of a request sent through diplomatic channels. Requests may also be made through INTERPOL.

If the High Criminal Court agrees to the request, after verifying that its implementation does not violate public order in the Kingdom of Bahrain, it nominates a judge or public prosecutor to conduct the investigation in accordance with the conditions established in the Code of Criminal Procedure.

The Money-Laundering Act also addresses requests for assistance from a foreign State, establishing that the Financial Investigations Unit executes requests for assistance relating to money-laundering offences, and various orders may be issued for that purpose by the investigating judge.

Bahrain can provide assistance in the absence of dual criminality and in the absence of a treaty. In the context of mutual legal assistance, the same package of measures and procedures is available as in domestic criminal proceedings. The same provisions on mutual legal assistance apply in relation to natural persons and legal persons.

While there is no legislation on the automatic exchange of information, such exchange has taken place between Bahrain and other States.

Although Bahrain does not have domestic procedures regulating the transfer and reception of detainees or persons serving a sentence, its bilateral treaty with India refers to this matter.

Articles 82 and 223 bis of the Code of Criminal Procedure regulate the questioning of the accused and hearing of witnesses, and the submission of information on the case through the use of modern audiovisual technology. Bahrain has experience in this area in relation to requests for mutual legal assistance.

Under the Code of Criminal Procedure, banking secrecy and the involvement of fiscal matters are not grounds for refusing mutual legal assistance.

Bahrain complies with requests to maintain the confidentiality of an application and its content on the basis of direct application of the Convention (article 37 of the Constitution). On the same basis, Bahrain can also provide mutual legal assistance in line with the provisions of article 46 of the Convention when dealing with requests made by States Parties which have no agreement with Bahrain on this matter.

Bahrain has concluded several bilateral and multilateral agreements on mutual legal assistance. The provisions of such agreements are consistent with the relevant provisions of the Convention.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The Bahraini law enforcement authorities cooperate through a number of mechanisms and networks, including INTERPOL and the Egmont Group of Financial Intelligence Units, while the Financial Investigations Unit in particular cooperates with its foreign counterparts, including in matters relating to asset recovery.

Bahrain has a wide range of tools for communication and analysis at the international level. It uses the usual channels of communication and secure secret channels such as the I-24/7 database of INTERPOL and the Egmont system.

The Kingdom of Bahrain considers the Convention to be a basis for mutual cooperation in the field of law enforcement. Bahrain has also signed several cooperation agreements in the field of security (an agreement between the Gulf Cooperation Council States and agreements with France, the Islamic Republic of Iran, Qatar, Saudi Arabia, Turkey and Yemen) and memoranda of understanding between the Ministry of Interior of the Kingdom of Bahrain and its counterparts in other countries (Egypt, the Islamic Republic of Iran, Jordan, Morocco, Pakistan, the Russian Federation and the United States of America), while the money-laundering and financing of terrorism unit has signed several memoranda of understanding with its counterparts (Algeria, Bermuda, Japan, Jordan, Sweden, Tunisia and the United Kingdom).

Bahrain has a specific law on information technology offences that makes it possible to punish anyone who has committed an offence provided for in any other law through any information technology system or medium. Bahrain also has a

specific directorate to combat cybercrime, that directorate forming part of the General Directorate for Combating Corruption and for Economic and Electronic Security.

Bahrain has not previously exchanged personnel.

The Kingdom of Bahrain has no legislation, agreements or arrangements governing joint investigations, and has not considered concluding such agreements.

With regard to corruption offences, the special investigative techniques provided for in the Code of Criminal Procedure may be applied, including the monitoring of communications and recording of conversations. Subject to authorization by the judge of the court of first instance, controlled deliveries and covert operations may also be carried out in corruption cases.

3.2. Successes and good practices

Overall, the highlights of the successes and good practices in the implementation of chapter IV of the Convention are the following:

- Bahrain has adopted a flexible approach to extradition, whether using the Convention as a legal basis or in the absence of an extradition treaty (article 44, paragraphs 5 and 7)
- Bahrain can provide mutual legal assistance in the absence of dual criminality (article 46, paragraph 9)

3.3. Challenges in implementation

The following steps would further strengthen existing anti-corruption measures:

- It is recommended that Bahrain tailor its information to allow it to collect data and provide more detailed statistics on requests for international cooperation
- Bahrain may wish to allow the extradition of persons for offences that are not punishable under domestic law (article 44, paragraph 2)
- It may also wish to ensure that acts that have yet to be criminalized (see challenges relating to the implementation of chapter III) are considered extraditable offences (article 44, paragraphs 1, 4 and 7)
- In order further to improve extradition procedures, it is recommended that Bahrain seek to accelerate and simplify these procedures in relation to evidentiary requirements (article 44, paragraph 9)
- It is recommended that Bahrain notify the Secretary-General of the United Nations of the name of the central authority and the languages acceptable to the Kingdom of Bahrain in relation to requests for mutual legal assistance (article 46, paragraphs 13 and 14)
- Bahrain may wish to consider the possibility of developing domestic procedures regulating the transfer and reception of detainees or persons serving a sentence (article 46, paragraphs 10 to 12)
- It may also wish to consider establishing a procedural framework governing the process of transfer of criminal proceedings (article 47)

- Bahrain is encouraged to enhance cooperation in the field of law enforcement, including through the exchange of personnel (article 48, paragraph 1 (e))
- Bahrain may wish to consider concluding bilateral or multilateral agreements or arrangements whereby the authorities concerned may establish joint investigative bodies (article 49).

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Arab Republic of Egypt

1. Introduction: Overview of the legal and institutional framework of the Arab Republic of Egypt in the context of implementation of the United Nations Convention against Corruption

The Arab Republic of Egypt (Egypt) signed the United Nations Convention against Corruption (the Convention) on 9 December 2003. The Convention was ratified by the President of the Arab Republic of Egypt in resolution 307/2004 of 11 September 2004, which was published in Official Gazette No. 6 of 8 February 2005. Egypt deposited its instrument of ratification of the Convention with the Secretary-General of the United Nations on 25 February 2005.

Egypt is a civil law country. The main sources of its law are the Egyptian Constitution, the laws voted in by its parliament and international law. Egypt's national legal framework against corruption includes provisions that form part of a number of laws, in particular the Penal Code, the Code of Criminal Procedure, the Illicit Gains Act, and the Anti-Money-Laundering Act.

It should be noted that all ratified and published treaties are supported by the force of the law in Egypt. The provisions of such treaties, with the exception of those in which a punishment or coercive measure must be applied, are implemented automatically without the need for legislative intervention (art. 151/1 of the Constitution).

Egypt possesses several mechanisms and agencies for combating corruption, including the Administrative Control Authority, a number of specialized prosecutor's offices, the Department of Illicit Gains of the Ministry of Justice, the Directorate General for Combating Financial Crime of the Ministry of the Interior, and the Unit for Combating Money-Laundering and the Financing of Terrorism. Egypt has also established a National Coordination Committee against Corruption.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The Egyptian legislature has made it an offence, under the Penal Code, to bribe public officials (art. 107 bis, together with arts. 103-105). This constitutes an offence even if the promise or offer is not accepted by the public official (art. 109 bis).

Under articles 103-105 of the Penal Code, it is a crime for a public official to accept or take a donation or promise, either for themselves or for a third party, in exchange for performing or refraining from performing any of the duties of their function.

Both the briber and the mediator are subject to the same punishment as the bribe-taker. The briber and the mediator are exempted from punishment if they inform the authorities about the crime or if they confess to it (art. 107 bis).

Bribery of foreign public officials or officials working for public international organizations is not criminalized under Egyptian law.

The Penal Code criminalizes any act in which the offender offers a promise or donation to a public official or any other person in order to encourage them to exert any real or supposed influence they may possess (art. 107 bis and art. 106 bis). This constitutes an offence even if the promise or offer is not accepted (art. 109 bis).

Article 106 bis of the Penal Code criminalizes any act in which a public official or any other person accepts or requests, on behalf of themselves or a third party, a donation or promise in exchange for exerting their real or supposed influence with a view to obtaining an undue advantage of any kind.

Under article 107 bis and articles 106 and 106 bis A of the Penal Code, the act of promising, offering or giving a bribe in the private sector is criminalized. This constitutes an offence even if the promise or offer is not accepted (art. 109 bis).

Soliciting or accepting bribes in the private sector is also criminalized under articles 106 and 106 bis A of the Penal Code.

Money-laundering, concealment (arts. 23 and 24)

The Egyptian legislature has criminalized the laundering of criminal proceeds under article 2 of the Anti-Money-Laundering Act No. 80 of 2002 and its amendments, the most recent of which is resolution No. 36 of 2014.

Any act that is considered to be a felony or a misdemeanour under Egyptian law could constitute a predicate offence for money-laundering, regardless of whether it was committed within the country or abroad, as long as the offence is punishable in both countries (art. 1c of the Anti-Money-Laundering Act). The persons who committed the predicate offence are not excluded from being prosecuted for the crime of money-laundering.

The law also criminalizes participation and cooperation in the crime of money-laundering, together with conspiring to commit the crime and facilitating, aiding or encouraging the crime, under the general provisions on criminal participation as set out in the Penal Code (arts. 40, 41, 43, 44 and 45). The act of providing advice is included as an act of assistance as set out in article 40, which refers to "assisting them in any other way". All attempts to launder money are criminalized under article 2 of the Anti-Money-Laundering Act.

Article 44 bis of the Penal Code criminalizes the concealment of stolen objects and of objects obtained through felonies or misdemeanours as a separate offence.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 112 of the Penal Code criminalizes embezzlement, but it does not explicitly cover acts of diversion or misappropriation. Such acts are punishable under article 116 bis, however, which comprehensively criminalizes deliberate damage caused to any interests or funds belonging to the organization for which the public official works or with which the official has some connection through their job, as well as to any other interests or funds entrusted to that organization. Similarly, the act of "misappropriation" is covered by article 113 of the Penal Code, which criminalizes the act of helping a third party to perform an act of embezzlement.

The abuse of functions is criminalized under article 115 of the Penal Code.

Egypt has a specific law that criminalizes illicit gain (Act No. 62 of 1975 on illicit gains). The termination of criminal proceedings due to death does not preclude the restitution of the illicit gains (art. 18).

Embezzlement in the private sector is criminalized under article 341 of the Penal Code on the abuse of trust. Article 113 bis of the Penal Code specifically covers embezzlement by the chair, board member, director or employee of a joint-stock company.

Obstruction of justice (art. 25)

Article 300 of the Penal Code criminalizes the act of inciting a witness not to give testimony or to give false testimony, including through the use of physical force, threats or intimidation. Article 298 covers the act of promising, offering or providing an undue advantage in order to obtain a false testimony, where testimony has been given. The act of inciting false testimony in cases where the testimony was obtained under influence is punishable under article 40 on criminal participation, together with article 294 on giving false testimony in cases involving a felony and article 296 on giving false testimony in cases involving a misdemeanour or violation. The act of using physical force, threats or intimidation or of promising, offering or providing an undue advantage in order to incite a witness to provide evidence in proceedings relating to any of the offences established in accordance with the Convention is punishable under article 40 on criminal participation, together with article 145 on concealing evidence of a crime or providing false information about a crime.

Article 137 bis A of the Penal Code criminalizes the use of force, violence or threats against a public official or any person charged with providing a public service in order to unjustly force that person to perform or refrain from performing any of the duties of their function.

Liability of legal persons (art. 26)

Egyptian legislation does not provide for the criminal liability of legal persons with regard to offences established in accordance with the Convention, except for the crime of money-laundering (art. 16 of the Anti-Money-Laundering Act). The civil liability of legal persons for criminal acts committed by their agents can be ascribed under the provisions of article 174 of the Civil Code.

Although the administrative responsibility of legal persons is set out in a number of laws, it does not extend to crimes of corruption.

The liability of legal persons, where established, does not prejudice the criminal liability of the natural persons who committed the crimes.

Participation and attempt (art. 27)

Articles 40, 41 and 42 of the Penal Code criminalize participation in crimes (participation, incitement, agreement and all forms of assistance). These articles apply to offences established in accordance with the Convention.

According to the Penal Code, participation in felonies is punishable in all cases except those excluded by special provisions (art. 46). With regard to misdemeanours, participation is punishable only under specific provisions (art. 47).

Participation in an offence established in accordance with the Convention is punishable under Egyptian law, except for acts of bribery in the private sector, embezzlement of property in the private sector and inciting a person to give false testimony.

The mere act of deciding to commit an offence or of preparing to commit an offence is not punishable under the Penal Code (art. 45).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The sanctions for offences established in accordance with the Convention range from fines to life imprisonment, depending on the seriousness of the offence. Immunities do not constitute an impediment to the prosecution of such crimes. Certain categories of public officials are granted procedural immunity by Egyptian law, but members of the government and the state administration do not hold any special immunity.

Egypt has adopted the principle of mandatory prosecution.

Detainees may be released pending trial, with or without bail. Under article 52 of the Prisons Act, detainees may be granted conditional release from imprisonment if they have already served three quarters of their sentence.

The Administrative Control Authority may request that a public official be dismissed or removed temporarily from their position if it is in the public interest. This is to be decided by the chair of the executive board.

Under article 25 of the Penal Code, any person who has been subject to criminal sanctions is not allowed to provide government services of any kind. Article 15 of Civil Service Act No. 18 of 2015 sets out the conditions applicable to persons appointed to public service, under which persons who have previously been sentenced to criminal sanctions or imprisonment for crimes involving immorality or dishonesty are not eligible to be appointed to positions of public service, unless they have been rehabilitated. Persons convicted of offences established in accordance with the Convention are not allowed to hold positions in any organization that is either wholly or partly owned by the State in accordance with a number of laws, in particular Act No. 159 of 1981 on joint-stock companies, private limited companies and limited liability companies (art. 89) and Act No. 203 of 1991 on public sector companies (arts. 1, 4 and 44).

Criminal sanctions do not prevent the competent authorities from exercising their disciplinary powers with regard to civil servants.

Egypt runs prisoner rehabilitation programmes, as well as programmes to support released prisoners and to help them reintegrate into society.

Egyptian law does not grant immunity from prosecution to persons who offer to assist with the investigation; the accused can only be exempted from punishment by judicial decision and in accordance with the conditions established by law (arts. 107 bis and 118 bis of the Penal Code and art. 17 of the Anti-Money-Laundering Act).

Egyptian law does not provide for the protection of persons who collaborate with the justice system.

Protection of witnesses and reporting persons (arts. 32 and 33)

Egyptian legislation does not provide for the protection of victims, witnesses, experts or reporting persons. The National Coordination Committee against Corruption has proposed a bill in order to provide such protection.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 30 of the Penal Code provides for the confiscation of seized items derived from felonies or misdemeanours, including any seized weapons or equipment that were used in the crime or that were intended to be used.

Property equivalent in value to the criminal proceeds, or any property into which those proceeds were transformed, may be frozen, seized and/or confiscated in possible cases of money-laundering or illicit gains and in crimes involving the embezzlement of public funds.

This is not provided for, however, in crimes of corruption (in either the public or the private sector), nor in cases of trading in influence or embezzlement of private funds.

The Egyptian legislature has not provided for the possibility of freezing, seizing or confiscating income or other benefits derived from the criminal proceeds of any of the offences established in accordance with the Convention, except for the crime of money-laundering.

The Code of Criminal Procedure grants broad powers to judicial police officers so that they may conduct inquiries into crimes and their perpetrators and collect the evidence required to investigate each case. Under article 208 bis A, the competent criminal court, at the request of the Prosecutor General's Office, may order interim measures to be taken with regard to the accused's property in order to prevent the accused from disposing of or managing that property. This is applicable to a number of crimes, including crimes of corruption. The Prosecutor General may, where necessary and in urgent cases, temporarily order such measures to be taken.

Under article 5 of the Anti-Money-Laundering Act, the Unit for Combating Money-Laundering and the Financing of Terrorism may investigate and examine all notifications and information received in connection with activities suspected of being predicate offences or of involving money-laundering or the financing of terrorism, and it may request that the Prosecutor General's Office take provisional measures.

Egypt has a mechanism for the management of withheld funds, which is based primarily on the provisions of the mandate set out in the Civil Code. A General Department of Withheld Funds was created in 1999 on the order of the Prosecutor General, in addition to the Unit for Withheld Funds in the Department of Illicit Gains and the Department of Confiscated Funds in the Ministry of Finance.

Under articles 97 and 98 of the Central Bank Act, banking secrecy does not constitute an impediment to criminal investigation. The Cairo Appeals Tribunal can, at the request of the Prosecutor General's Office, consult or obtain data or information held at any bank where necessary in order to uncover the truth behind a felony or misdemeanour, where supported by tangible evidence for the existence of such data. The Prosecutor General, or any authorized public lawyer, may directly

order a bank to provide them with, or give them access to, data or information held at that bank where necessary in order to uncover the truth behind a crime. This is applicable to a number of crimes, including money-laundering.

Offenders are not obliged to demonstrate that the sources of any criminal proceeds are legal except in cases of illicit gain (art. 2 of the Illicit Gains Act).

Statute of limitations; criminal record (arts. 29 and 41)

Under article 15 of the Code of Criminal Procedure, criminal proceedings lapse after 10 years for felonies and after three years for misdemeanours. The statute of limitations for all offences established in accordance with the Convention is therefore 10 years from the date that the crime took place, excluding in acts of corruption in the private sector, embezzlement of property in the private sector and inciting a person to give false testimony, for which the statute of limitations is three years.

This term may be interrupted by investigation, arrest or trial, or by criminal procedures or evidence-gathering, where carried out with regard to the accused or where official notice is given.

The statute of limitations begins on the date that the crime took place, except for crimes involving the embezzlement of public funds, the abuse of functions or the embezzlement of property in joint-stock companies, where the limitation period applies from the date that the staff member left their post or the date that their employment expired, unless the investigation began before that point.

The law does not allow prior convictions issued against the alleged offender in other States to be taken into account during criminal proceedings.

Jurisdiction (art. 42)

Egypt has established its jurisdiction over most of the cases referred to in article 42, with the exception of crimes of corruption committed abroad by stateless persons whose place of habitual residence falls within Egyptian territory and crimes of corruption committed against Egypt or its citizens. Egyptian law includes no specific provision in which the principle of *aut dedere aut judicare* is enshrined, however, in particular in cases where Egypt has no jurisdiction over the criminal act.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Civil Code includes a general provision (art. 125) which establishes that any act of fraud or deception renders a legal instrument void. This is a general legal principle which is used by the administration to support its requests to annul contracts that result from crimes of corruption.

Egyptian law allows for the payment of compensation for acts of corruption that have caused damage to third parties, in particular in accordance with the general rules of the Civil Code, under which compensation may be awarded for wrongful acts (art. 163).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Egypt has a number of bodies and agencies for combating corruption, of which the most notable is the Administrative Control Authority. This is an independent body that is responsible for exercising all forms of administrative and financial oversight and for identifying any criminal offences carried out by staff members while performing the duties of their posts. It is also entrusted with combating administrative corruption. Its jurisdiction extends to agencies and branches of the government, public and private bodies and institutions, and private sector bodies responsible for public works. It has adequate resources — including financial, technical and human resources — to perform its functions.

Egypt has also established a number of specialized prosecution departments, which play an important role in the fight against corruption: the Supreme Prosecution Office for State Security, the Supreme Prosecution Office for Public Funds, the Prosecution Office for Financial and Trade Affairs, and the Administrative Prosecution Authority.

In addition to these agencies, there is the Department of Illicit Gains of the Ministry of Justice, the General Department for Combating Crimes involving Public Funds of the Ministry of the Interior and the Unit for Combating Money-Laundering and the Financing of Terrorism. Egypt has also established a National Coordination Committee against Corruption.

With regard to cooperation between national authorities, under article 26 of the Code of Criminal Procedure, if a public official or an official in the public service has knowledge of a crime, they are obliged to report it immediately to the Prosecutor General's Office. Similarly, under article 7 of the Anti-Money-Laundering Act, the competent authorities are obliged to inform the Unit for Combating Money-Laundering and the Financing of Terrorism of any information they may possess concerning crimes of money-laundering. Egypt had established a National Coordination Committee to combat money-laundering and the financing of terrorism.

With regard to cooperation between national authorities and the private sector, under article 8 of the Anti-Money-Laundering Act, financial institutions, professionals and non-financial businesses are obliged to inform the Unit for Combating Money-Laundering and the Financing of Terrorism of any activities suspected of constituting a predicate offence or of involving money-laundering or the financing of terrorism.

A number of hotlines have been set up to receive complaints and reports. These include hotlines for receiving reports from the oversight bodies, such as the Administrative Control Authority and the Department of Public Funds.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- The criminalization of public officials who receive a reward as compensation following the completion of the duties of their position (art. 105 of the Penal Code);

- The fact that the termination of criminal proceedings due to death in cases of illicit gain does not preclude the restitution of the illicit gains (art. 18 of Act No. 62 of 1975 on illicit gains);
- The fact that the statute of limitations in cases of corruption, influence-peddling, embezzlement of public funds, abuse of functions and embezzlement of property in joint-stock companies applies only as of the date that the staff member left their post or their employment expired, unless the investigation began before that date (art. 15 of the Code of Criminal Procedure, as amended by Act No. 6 of 2015);
- The fact that, in cases involving the illicit use of public funds, reparations may also be applied to funds held by the accused's spouse and children, where confirmation can be found that those funds were given to them by the accused and that they are proceeds of the offence in question. The termination of the criminal proceedings due to death does not preclude the criminal justice system, in cases involving the illicit use of public funds, from applying reparations in an effective manner with regard to the funds held by heirs, legatees and all those who benefited considerably from the crime, according to the degree to which each of those persons benefited (art. 208 bis of the Code of Criminal Procedure).

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Criminalize the bribery of foreign public officials and officials of public international organizations (art. 16, para. 1);
- Consider criminalizing the acceptance of bribes by foreign public officials and officials of public international organizations (art. 16, para. 2);
- With regard to the protection of witnesses and reporting persons (arts. 32 and 33):
  - Take appropriate measures to provide effective protection against potential retaliation or intimidation for witnesses and experts who give testimony in relation to any offences established in accordance with the Convention, as well as for their relatives and other persons close to them, as appropriate. Such measures must apply to victims if they act as witnesses and to any accused persons who help in the investigation or prosecution of any offences established in accordance with the Convention;
  - Take the necessary measures to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence;
  - Consider adopting appropriate measures to provide protection against any unjustified treatment for any person who reports to the competent authorities, in good faith and on reasonable grounds, any instance of illegal activity as established in the Convention;
- Adopt the necessary measures to enable the freezing, seizing and confiscation of property equivalent in value to the criminal proceeds derived from crimes of corruption (in both the public and the private sector), trading in influence

and embezzlement of funds, or any property into which those proceeds were transformed;

- Adopt the necessary measures to enable the freezing, seizing and confiscation of any income or other benefits derived from the criminal proceeds of offences established in accordance with the Convention;
- Egypt is encouraged to consider including in its legislation a provision in which the principle of *aut dedere aut judicare* is explicitly enshrined.

3. Chapter IV: International cooperation

Egyptian general law contains no provisions on international judicial cooperation; however, a bill has been submitted by the Prosecutor General's Office in this regard, in which all aspects of such cooperation are examined, in particular judicial assistance, the extradition of criminals, the transfer of convicted persons, and the transfer of criminal proceedings. The bill is currently under consideration by the Legislation Section of the Ministry of Justice, with a view to presenting it to Parliament at its first session.

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Egyptian general law contains no detailed provisions on extradition, despite the fact that a number of bills have been presented concerning international judicial cooperation, according to which cooperation of this kind must be addressed in line with the rules set out in the international conventions or on the basis of the principle of reciprocity (art. 18 of the Anti-Money-Laundering Act).

In practice, extradition requests are sent to the Cooperation Section of the Ministry of Justice (the central authority), then referred to the Prosecutor General's Office. The Prosecutor General makes the final decision as to whether to approve or reject the request, against which decision an appeal may be made.

Furthermore, the President of the Arab Republic of Egypt may, pursuant to Act No. 140 of 2014, approve the extradition of accused persons and the transfer of sentenced persons where it is in the supreme interest of the State, on the request of the Prosecutor General and with the approval of Parliament.

Egypt cannot grant extradition in the absence of dual criminality.

Egypt does not make extradition conditional on the existence of a treaty. In cases involving offences established in accordance with the Convention, the perpetrator may be subject to extradition, in accordance with the direct application of the provisions of the United Nations Convention against Corruption (art. 151/1 of the Egyptian Constitution). Egyptian law does not consider these crimes to be political offences and it does not require that a given period of imprisonment be imposed in order to accept extradition requests.

Although some bilateral treaties concluded between Egypt and other States concerning extradition provide for a number of procedures aimed at accelerating the handling of extradition requests, a panel of experts was unable to establish how effective, clear or expeditious those procedures were.

Egypt may detain any person in Egyptian territory for whom extradition is sought or may take other appropriate measures to ensure their presence at extradition proceedings, in accordance with the provisions of a number of bilateral agreements on extradition that address the matter.

Egypt does not extradite Egyptian nationals (art. 62 of the Constitution). The principle of *aut dedere aut judicare* is recognized in Egypt, but it is not regulated by statutory law.

The enforcement of foreign criminal sanctions may be considered in exceptional circumstances where regulated by bilateral or multilateral treaties.

Guarantees of fair treatment are provided in the Constitution and the Code of Criminal Procedure and are applicable in extradition proceedings.

Neither the Egyptian law nor the bilateral agreements on extradition concluded between Egypt and other States provide for the refusal of an extradition request on the sole ground that the offence concerns financial matters.

Egypt has concluded a wide range of bilateral treaties on extradition and is party to several multilateral agreements on the same issue.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

Egypt has concluded a number of bilateral and regional agreements on the transfer of sentenced persons, which provide for the transfer of sentenced persons who have committed an offence established in accordance with the Convention.

Mutual legal assistance (art. 46)

Egyptian general law contains no detailed provisions on mutual legal assistance, despite the fact that a number of bills have been presented concerning international judicial cooperation, according to which cooperation of this kind must be addressed in line with the rules set out in the international conventions or on the basis of the principle of reciprocity (art. 18 of the Anti-Money-Laundering Act). This also applies to the terms concerning dual criminality included in those conventions.

Egypt has designated the International Cooperation Section of the Ministry of Justice as the central authority, and has furnished the Secretary-General of the United Nations with this information.

In accordance with most of the conventions and measures on this issue, the application must be presented in writing, or orally in urgent cases, and confirmed in writing in the language of the requesting State, accompanied by a certified translation in English, French or the language of the State that has received the request. In the absence of an agreement with the requesting State, the application is to be made in Arabic, or in English for non-Arabic-speaking States.

Egypt may provide assistance regardless of whether or not a treaty is in place and in the absence of dual criminality. The same range of coercive measures that are available in domestic criminal proceedings can also be used when providing mutual legal assistance. The same provisions apply to requests for mutual legal assistance concerning both physical and legal persons.

Egypt may send any information relevant to criminal matters to other countries automatically, without the need for a formal request.

Egypt has no integrated legal rules on conducting investigations via video. However, a number of bills concerning this possibility are currently under consideration.

Neither bank secrecy nor the mere fact that the offence is thought to involve fiscal matters are grounds for refusing to provide mutual legal assistance.

Egypt does not have any domestic procedures for the transfer or reception of detained persons or of persons who are serving prison sentences.

Egypt complies with requests to maintain confidentiality surrounding any given request and its contents, in direct accordance with the Convention. On the same basis, Egypt also provides mutual legal assistance in line with the provisions of article 46 of the Convention when dealing with requests made by States Parties to the Convention that have not entered into a treaty with Egypt on the issue.

Egypt has concluded a number of bilateral and multilateral treaties on mutual legal assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

A number of channels of direct communication operate between the Egyptian law enforcement authorities and their counterparts in other States. Egypt cooperates with other States with regard to crimes through the international cooperation channels of the Ministry of the Interior (National Security Section), INTERPOL Cairo, the International Cooperation Section of the Ministry of Justice, the International Cooperation Office of the Prosecutor General's Office, and the Unit for Combating Money-Laundering and the Financing of Terrorism.

Egypt has a wide range of tools for communication and analysis at international level. Standard communication channels are used, in addition to secure covert channels such as INTERPOL's I-24/7 database and the Egmont Secure Web system (ESW).

Egypt has entered into bilateral and multilateral agreements and arrangements on direct cooperation with law enforcement bodies in other States Parties to the Convention. The Prosecutor General's Office has produced a number of memorandums on direct cooperation and on opening up direct channels of communication with counterparts in other States. The Unit for Combating Money-Laundering and the Financing of Terrorism has also signed 19 memorandums with its foreign counterparts. Egypt considers the Convention to be the basis for mutual cooperation in enforcing the law with regard to the crimes set out therein.

Egypt has no legislation, agreements or arrangements on joint investigations.

For offences established in accordance with the Convention, measures permitted in the Code of Criminal Procedure may be taken when performing special investigative techniques, including communication surveillance and conversation recording, after obtaining permission from the investigating judge. Egypt may use controlled deliveries and undercover operations in corruption cases.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- Egypt has adopted a flexible approach to extradition, both when using the Convention as a legal basis and in the absence of a treaty on extradition (art. 44, paras. 5-7);
- Egypt can provide mutual legal assistance in the absence of dual criminality (art. 46, para. 9).

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Consider adopting specific, detailed legislation on international cooperation that covers the issues of extradition and mutual legal assistance;
- Take the additional steps needed to strengthen mutual legal assistance when provided with a view to identifying, tracing and freezing the proceeds of crime and recovering lost assets, in accordance with the provisions of chapter V of this Convention;
- Consider adopting domestic procedures for the transfer and reception of persons in custody and persons who are serving prison sentences (art. 46, paras. 10-12);
- Consider approving legislation on the transfer of criminal proceedings (art. 47);
- Consider concluding bilateral or multilateral arrangements or agreements that would enable the competent authorities to establish joint investigative bodies (art. 49).

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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Ireland

1. Introduction: Overview of the legal and institutional framework of Ireland in the context of implementation of the United Nations Convention against Corruption

Ireland signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 9 November 2011.

Ireland is a parliamentary democracy. The Parliament is the sole legislative authority of the State and consists of the President and two Houses: *Dáil Éireann* (the House of Representatives) and *Seanad Éireann* (the Senate) whose powers and functions derive from the Constitution of Ireland (1937).

Irish law is based on English Common Law, substantially modified by indigenous concepts, the written Constitution of 1937, statute law and judicial decisions. Ireland's reliance on doctrine is only secondary to case law and legislation. Ireland follows a dualistic approach with regard to the incorporation of public international law. Following its ratification, the Convention is part of Irish law. This means that the courts can have reference to the Convention and should interpret domestic law in conformity with the Convention. However, the Convention cannot be invoked to override national law. The Convention is not self-executing.

The structure of the court system comprises a court of final appeal, the Supreme Court, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction, the Circuit Court and the District Court.

An Garda Síochána is the national police service of Ireland. It has responsibility for carrying out all policing duties in the Irish State, including the fight against corruption. The prosecution of offences is the task of the Office of the Director of Public Prosecutions (DPP). The main piece of anti-corruption legislation is the Prevention of Corruption Act (POCA), as amended.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The provision on active bribery is contained in Section 2(2) of the Prevention of Corruption (Amendment) Act 2001. Passive bribery is criminalized in Section 2(1) of that Act. In Section 2(5), the definition of the bribee ("agent") includes not only national and foreign officials but also any kind of employees. Therefore, the Irish bribery legislation covers articles 15, 16 and 21 of the Convention against Corruption in the same provision.

The element of "undue advantage" is implemented as "any gift, consideration or advantage" which is "corruptly" given or received. The term "corruptly" is defined in section 2 and includes acting with an improper purpose.

While Ireland stated that the "promise" of a bribe is covered under the present law, the reviewers noted that such a "promise" — i.e., a unilateral act (unlike "agrees to

give") geared towards a deal in the future (unlike "offer") — is not explicitly included in the text of the law as it stands. Third-party beneficiaries of the advantage are explicitly mentioned in the text of the law ("for the benefit of ... another person") and include entities, as the term "person" encompasses legal persons.

Trading in influence is currently not criminalized comprehensively, although some forms will be captured by the existing provisions of Sections 2(1) and (2). It is intended that, also for the purpose of clarity, the forthcoming Criminal Justice (Corruption) Bill will provide distinct trading in influence offences (cf. Head 3 in the General Scheme of the Bill).

Money-laundering, concealment (arts. 23 and 24)

The principal money-laundering offences are set out in Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (AML Act). Section 11 of the AML Act contains important presumptions as to the knowledge or belief of accused persons which can reasonably be inferred from actions and circumstances. Section 7(2) of the AML Act criminalizes attempts to commit a money-laundering offence and Section 7 of the Criminal Law Act 1997 criminalizes aiding and abetting. Conspiracy is punished under common law.

Ireland has adopted an all-crimes approach without a *de minimis* threshold. Section 6 of the AML Act defines the predicate for money-laundering to include conduct occurring in a place outside the State. The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized conduct.

The offences in Part 2 of the AML Act also cover concealment, as foreseen in article 24 of the Convention.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The existing common law offences of larceny, embezzlement, and fraudulent conversion were replaced by a new offence of "theft" under the Criminal Justice (Theft and Fraud Offences) Act 2001, which also covers the embezzlement offence. The definition of property does not distinguish between public or private property.

Article 19 of the Convention against Corruption is implemented through the provisions of Section 8 POCA 2001.

Ireland stated that it has not adopted and criminalized illicit enrichment but has considered introducing the offence. Section 16B of the Proceeds of Crime Act provides civil proceedings whereby the proceeds derived from corrupt conduct may be recovered from an official. The General Scheme of the Criminal Justice (Corruption) Bill contains in Head 12 a provision whereby wealth which is disproportionate to an official's emoluments and interests as declared in his or her statement of registrable interests is presumed to derive from a bribe.

Obstruction of justice (art. 25)

Article 25 of the Convention against Corruption is implemented through the common law crime of subornation of perjury, i.e., the encouragement of a witness to

perjure themselves. Perverting the course of justice is also an offence at common law, as is the offence of embracery.

Section 41 of the Criminal Justice Act 1999 makes it an offence for a person to harm or threaten, menace or intimidate another person who is assisting in the investigation by the *Garda Síochána*. In addition, the obstruction of public officials is criminalized by section 7 of the Offences Against the State Act 1939 (as amended).

Liability of legal persons (art. 26)

The common law doctrine of identification provides for the liability of legal persons whereby the acts of the controlling officers of a legal person are viewed as constituting the acts of the legal person itself. The General Scheme of the Criminal Justice (Corruption) Bill makes specific provision for the liability of legal persons where an offence is committed by any employee of a legal person with the intention of obtaining or retaining business.

Under the current common law system of liability, the liability of a natural person or persons with sufficient control over the legal entity must be established first in order to hold the legal person liable. All relevant indictable offences carry unlimited fines to which legal persons would be liable.

Participation and attempt (art. 27)

Article 27 of the Convention against Corruption is implemented through Section 7 of the Criminal Law Act 1997, Sections 7, 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, and Section 71 of the Criminal Justice Act 2006.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The range of punishment for corruption crimes makes it possible to take into account the gravity of the relevant offences. All of the indictable offences carry a maximum penalty of an unlimited fine, along with a substantial period of imprisonment.

There is no immunity from criminal prosecution or investigation for any person in Irish law, other than the President.

Ireland has a discretionary prosecution system. The discretion relating to the prosecution of persons for serious corruption offences vests in the Director of Public Prosecutions (DPP). The prosecution guidelines explicitly mention corruption.

Article 30, paragraph 6, of the Convention against Corruption is implemented through disciplinary codes within the various sectors. While Ireland indicated the possibility for disqualification from membership of Parliament, there are no other laws providing for disqualification for other officials. Disciplinary measures can also be applied if no criminal sanction has been imposed.

The legislation promotes the reintegration into society of persons convicted of offences. The Irish Prison Service provides reintegration programmes to all those in custody, subject to certain qualifying periods.

The Irish legislation does not provide for plea bargaining agreements. However, cooperating offenders/accomplices have been granted immunity from prosecution in some cases. Cooperation with the investigation and the prosecution itself are matters that a court must take into account.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Criminal Justice Act 1999 provides a number of protections to witnesses, jurors and others in the context of criminal prosecutions. Ireland has a comprehensive witness protection programme, which is the task of the national police. Protection is given to certain witnesses, in particular child witnesses, to allow evidence to be given by video link. Ireland has established a Victims of Crime Office and a Victims of Crime Charter.

Specific protection for whistle-blowers is contained in the POCA 2010. In addition, further comprehensive whistle-blower protection arrangements are contained in the Protected Disclosures Act 2014. The Act is extraordinarily broad in its personal scope of application. It covers all employees, whether in the public or private sector. The Act does not include a public interest or good faith requirement.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The criminal confiscation system set out in the Criminal Justice Act 1994 is value based.

For conviction-based provisions, Section 9 of the Criminal Justice Act 1994 provides that the DPP may make an application to the court for a confiscation order, requiring the person concerned to pay such a sum as the court sees fit having regard to the benefit and/or pecuniary advantage obtained and the amount which might be realized. In order to enhance effective compliance with these provisions, the DPP has established a specialist unit.

In relation to non-conviction-based (NCB) confiscation, carried out by the Criminal Assets Bureau, there are comprehensive provisions in the Proceeds of Crime Acts 1996 and 2005. This is a civil process which does not require that the person in possession or control of the asset be convicted of a criminal offence. The objective is to deprive or deny the person the benefits of proceeds of crime.

The Office of the Director of Public Prosecutions has established a specialist unit which is responsible for asset management. The Criminal Assets Bureau also has responsibilities with regard to asset management.

Section 56 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, requires a financial institution, as provided therein, to have systems in place to respond efficiently and appropriately to Garda enquiries in relation to its business relationships. Ireland does not have a central register of bank accounts and it is not sufficient to claim that proceeds of crime are in a bank in Ireland in order to obtain a court order allowing to request all banks in Ireland to provide information. Requests must be sent to individual banks on the basis of information provided.

The Proceeds of Crime Act does not contain a full reversal of the burden of proof. It remains for the State to establish to the satisfaction of the court on the balance of probabilities that the respondent is in possession or control of assets which comprise proceeds of crime.

The rights of bona fide third parties are protected under the Proceeds of Crime Act.

Statute of limitations; criminal record (arts. 29 and 41)

There is no statute of limitations applicable in Ireland in respect of indictable offences.

Previous convictions of another State can be taken into account at sentencing.

Jurisdiction (art. 42)

Ireland has established territorial jurisdiction, flag state jurisdiction, the active personality principle and jurisdiction in lieu of extradition. All these jurisdictional bases are foreseen in a consolidated jurisdiction provision in Head 9 of the General Scheme of the Criminal Justice (Corruption) Bill 2012.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Courts will not enforce illegal contracts. Corruption would be a relevant factor in a legal action to annul or rescind a contract. According to the European Union public procurement directives, suppliers convicted of corruption offences are mandatorily excluded from the tendering procedures.

Persons suffering damage or loss can take civil action, for instance in torts. Persons can also pursue claims for contractual and non-contractual damages through the civil courts. A criminal conviction is not a precondition to the commencement of civil proceedings by a victim seeking compensation from an alleged wrongdoer.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Ireland does not have a specialized anti-corruption agency. Instead, the national police, *An Garda Síochána*, and the other law enforcement bodies also deal with corruption offences. The Garda Bureau of Fraud Investigation (GBFI) is a specialist bureau within *An Garda Síochána* which undertakes specialized investigations (including foreign bribery investigations). Corruption offences would also be investigated by local units of *An Garda Síochána* with support and advice from the GBFI.

The GBFI includes the Financial Intelligence Unit (FIU). The FIU is a member of the Egmont Group of Financial Intelligence Units and closely cooperates with the Criminal Assets Bureau. It has the power to impose a freezing order for seven days.

The police have set up the Garda Knowledge Management Portal, a database containing all relevant legislation and case law; information on assets, proceeds of crime, and DNA as well as templates.

The Authority vested with the responsibility for the prosecution of persons for serious corruption offences is the Director of Public Prosecutions (DPP). A specialist unit has been established within the DPP's office, with appropriate training, retaining responsibility for the prosecution of serious corruption offences to which appropriate resources have been assigned. While the DPP, as a general rule, has no power to direct *An Garda Síochána* or other agencies in their investigations, she and her Office cooperate regularly with such investigating agencies during the course of criminal investigations.

The Criminal Assets Bureau is a statutory body whose remit is to carry out investigations into the suspected proceeds of criminal conduct. It identifies assets of persons which derive directly or indirectly from criminal conduct and then takes appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The fact that the Irish anti-bribery legislation goes beyond the requirements of the Convention in that it applies equally to national and foreign officials, as well as the private sector (articles 15, 16 and 21 of the Convention).
- The broad definition of the recipient of a bribe ("agent"), which includes "any person employed by or acting for another", was highlighted as a good practice (articles 15, 16 and 21 of the Convention).
- The civil remedy in Section 16B of the Proceeds of Crime Act, whereby the proceeds of corrupt conduct may be recovered from an official through a "corrupt enrichment order", which was considered to constitute an effective alternative to the criminalization of illicit enrichment (article 20 of the Convention).
- The non-existence of immunities from criminal prosecution or investigation for any public officials other than the President (article 30, paragraph 2, of the Convention).
- The comprehensive nature of the Irish witness protection programme (article 32 of the Convention).
- The comprehensive whistle-blower protection legislation enacted in the Protected Disclosures Act 2014 (article 33 of the Convention).
- Ireland's non-conviction-based (NCB) confiscation legislation and its enforcement through the Criminal Assets Bureau (article 31 of the Convention).
- The establishment of the Garda Knowledge Management Portal (article 36 of the Convention).

2.3. Challenges in implementation

While noting Ireland's efforts in the field of anti-corruption, the reviewers identified a number of challenges in implementation and/or grounds for further improvement and made the following recommendations (depending on the mandatory or optional nature of the relevant Convention against Corruption requirements):

- Swiftly adopt and implement the Criminal Justice (Corruption) Bill.
- Concerning articles 15 and 16 of the Convention:
  - Explicitly criminalize the "promise" of a bribe.

- Implement a better case tracking system to be able to evaluate the effectiveness and identify any weaknesses in the current enforcement system.
- To monitor the effective enforcement of article 16, paragraph 1, of the Convention and take any necessary measures to strengthen its implementation.

- Concerning article 18 of the Convention, it was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to comprehensively criminalize trading in influence.
- Concerning article 26 of the Convention, it was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to:
  - Establish an effective and comprehensive system of corporate criminal liability.
  - Establish an effective and comprehensive system of liability that is not dependent on the prior establishment of liability of a natural person or persons with sufficient control over the legal entity.
- Concerning article 30, paragraph 7, of the Convention, it was recommended that Ireland take measures to allow for the disqualification of persons other than MPs convicted of corruption offences from holding public office.
- Concerning article 31, paragraph 7, of the Convention, Ireland was encouraged to consider the introduction of a central register of bank accounts.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the Extradition Act 1965, the Extradition (European Convention on the Suppression of Terrorism) Act 1987, the Extradition (Amendment) Act 1987, the Extradition (Amendment) Act 1994, the Extradition (European Union Conventions) Act 2001, the European Arrest Warrant Act 2003, and the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012.

As Ireland does not make extradition conditional on the existence of a treaty, it can extradite on the basis of reciprocity. Ireland may also use the Convention as the legal basis for extradition.

Dual criminality is a fundamental requirement for extradition under Irish law. Ireland extradites its nationals unless there is an explicit exclusion of such extraditions in a bilateral treaty with the requesting State, which is not the case in any of Ireland's existing treaties. Should extradition be denied, section 38 of the Extradition Act 1965 (as amended), together with sections 7 and 8 of the Criminal Law Act 1997 (as amended), provide the legal basis for trying the offence in Ireland.

If the extradition of nationals for the purposes of enforcing a sentence is refused, Ireland can enforce foreign sentences from determined States on the basis of the Transfer of Execution of Sentences Act, 2005.

Extraditable offences are those punishable in both the requesting State and Ireland by imprisonment for a maximum period of at least one year or by a more severe penalty and for which, if there has been a conviction and sentence in the requesting State, imprisonment for a period of at least four months or a more severe penalty has been imposed. Ireland does not provide for accessory extradition in line with article 44, paragraph 3, of the Convention.

The decision to extradite lies with the High Court, and the general rules applicable to criminal trials also apply in extradition procedures.

No information was provided by the Irish authorities on the average length of extradition proceedings.

Several amendments to significantly simplify and expedite the extradition process have been made by the European Arrest Warrant Act 2003 (Application to Third Countries and Amendment) and the Extradition (Amendment) Act 2012, such as the repeal of provisions which required that evidence in extradition proceedings be provided by sworn affidavit, and allowing for providing accompanying legislation of the requesting State as reproduction instead of as a certified copy of the law.

Section 11 of the Extradition Act 1965 (as amended) establishes the grounds for refusal of an extradition. The threat of prosecution or punishment on account of the requested person's sex or ethnic origin are not included as reasons for denial of extradition. However, Irish courts are obliged to interpret any legislation in accordance with the European Convention on Human Rights, which establishes the prohibition of discrimination, inter alia, on the grounds of sex and national or social origin or association with a national minority.

While the Extradition Act 1965 (as amended) does not set forth that offences established in accordance with the Convention offences are not to be considered political offences, the jurisprudence of the Irish courts provides a very narrow interpretation of political offences and it was considered unlikely that any of the offences established in accordance with the Convention would be regarded as such.

Extradition cannot be refused solely on the ground that the offence is also considered to involve fiscal matters.

Ireland has bilateral extradition treaties with Australia, the Hong Kong Special Administrative Region of the People's Republic of China and the United States of America. It is party to multilateral extradition agreements and arrangements, including the European Convention on Extradition.

With regard to the transfer of sentenced persons, Ireland is party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has passed the Transfer of Sentenced Persons Acts 1995 and 1997.

While transferring criminal proceedings to and from Northern Ireland is possible for certain offences, this is not applicable in corruption cases.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is regulated by the Criminal Justice (Mutual Assistance) Act 2008. However, the Act is only applicable to Member States of the European Union, Iceland and Norway, as well as other States designated as per S.I. No. 222/2012 — Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012. Not all States parties to the Convention have been designated, or are members of the European Union. Nevertheless, the Act allows for effect to be given to certain international agreements, or provisions of such agreements, between Ireland and other States relating to mutual assistance in criminal matters, including articles 46, 49, 50 and 54 to 57 of the Convention.

Ireland can use the Convention as legal basis for assistance. Ireland has concluded two bilateral treaties and two multilateral treaties on MLA. Ireland is also party to the European Convention on Mutual Assistance in Criminal Matters and its two additional Protocols.

In the absence of dual criminality, Ireland renders assistance involving non-coercive action.

Ireland can provide MLA for a wide range of measures, also with regard to offences for which a legal person can be considered responsible. The identification or tracing of proceeds of crime, property, instrumentalities or other things for evidentiary purposes, as well as the facilitation of the voluntary appearance of persons other than prisoners in the requesting State party is not regulated. While the Criminal Justice (Mutual Assistance) Act 2008 provides for the execution of a freezing order in sections 34 and 35, it does not address the identification and tracing of proceeds of crime in accordance with the provisions of chapter V of the Convention.

The Minister for Justice and Equality is the Irish Central Authority for Mutual Legal Assistance in Criminal Matters (Ireland has notified the Secretary-General of the United Nations accordingly), and has the function of receiving, transmitting and otherwise dealing with and cooperating with requests in accordance with relevant international instruments.

Section 65 of the Criminal Justice (Mutual Assistance) Act 2008 addresses the transfer of persons detained or serving a sentence to Ireland, while section 66 regulates the transfer of such persons from Ireland to another State.

Requests are accepted in English and Irish (Ireland has notified the Secretary-General of the United Nations accordingly). In urgent cases, requests can be received by e-mail, if they are confirmed through the provision of hard copy documentation afterwards. Ireland does not accept oral requests for assistance.

The Criminal Justice (Mutual Assistance) Act 2008 provides for the hearing of witnesses through videoconferencing in sections 67 to 70.

The Irish authorities did not provide information on the average time needed to afford assistance to other States.

Assistance may be refused in accordance with section 3 of the Criminal Justice (Mutual Assistance) Act 2008; requests cannot be refused on the sole ground that the offence is also considered to involve fiscal offences. Bank secrecy can be lifted to provide assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement authorities cooperate through organizations and networks such as the International Criminal Police Organization (INTERPOL), the European Police Office (Europol), the Egmont Group, the Camden Asset Recovery Inter-Agency Network, Fin.Net and others. *An Garda Síochána* has liaison officers working in several Irish embassies, as well as officers working with INTERPOL and Europol, and facilitates personnel to work with the Police Service of Northern Ireland.

The Criminal Justice (Joint Investigation Teams) Act 2004, as amended by section 96 of the Criminal Justice (Mutual Assistance) Act 2008, foresees the possibility of creating joint investigation teams with Member States of the European Union or designated States.

The Criminal Justice (Surveillance) Act 2009 allows for the use of surveillance techniques by competent authorities in criminal investigations. Sections 88-90 of the Criminal Justice (Mutual Assistance) Act 2008 provide for the use of controlled delivery in MLA cases with Member States of the European Union, Iceland and Norway, and other designated States. Ireland is party to several multilateral instruments that address the use of special investigative techniques at the international level. Irish legislation does not specify methods of controlled delivery.

3.2. Successes and good practices

- The fact that, in order to simplify and expedite the extradition process, Ireland has made several amendments to its Extradition Act, which were acknowledged and welcomed as facilitating cooperation (art. 44, para. 9).
- The acceptance of draft requests in order to ensure their compliance with the requirements for extradition requests as a means to significantly improve the quality of the cooperation and accelerate the extradition process (art. 44, para. 17).
- The fact that Ireland has prepared and disseminated a guide on its mutual legal assistance system, entitled "Mutual legal assistance in criminal matters: a guide to Irish law and procedures", which is available online and can help requesting States in the formulation of their MLA requests (art. 46, para. 1).
- The lifting of bank secrecy in response to MLA requests is frequently carried out in practice and the *Garda Síochána* can request such information from banks and financial institutions (art. 46, para. 8).
- Ireland accepts request for police-to-police cooperation either directly by other States' police services or through INTERPOL (art. 48, para. 1).
- Ireland has established a protocol for the exchange of evidence and the sharing of forensics with Northern Ireland to facilitate cooperation. A guidance manual for police and prosecution services from Ireland and Northern Ireland has been issued to streamline cooperation (art. 49).

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Ireland:

- Consider amending the domestic legislation to allow for accessory extradition (art. 44, para. 3).
- In a future revision of existing extradition treaties concluded with other States parties, or in future extradition treaties, include the offences established in accordance with the Convention as extraditable offences (art. 44, para. 4).
- Consider extending the domestic legal framework to also allow for the execution of sentences imposed by the requesting State party when extradition of nationals is denied (art. 44, para. 13).
- Consider concluding further bilateral and multilateral treaties in order to enhance the effectiveness of extradition (art. 44, para. 18).
- Consider concluding agreements for the transfer of sentenced persons with States that are not parties to the European Convention on the Transfer of Sentenced Persons (art. 45).
- Clarify the national ability to provide assistance to all States parties to the Convention, including those that are not designated States or Member States of the European Union; and consider whether the collection of separate statistics on requests related to offences established in accordance with the Convention would be beneficial (art. 46, para. 1).
- Consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to article 46 in the absence of dual criminality (art. 46, para. 9 (c)).
- Ireland could accept oral requests made in urgent circumstances if they are confirmed in writing afterwards (art. 46, para. 14).
- Ireland could consider providing to a requesting State party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public (art. 46, para. 29 (b)).
- Continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of mutual legal assistance (art. 46, para. 30).
- Consider the development of legal frameworks to regulate the transfer of criminal proceedings for the prosecution of offences established in accordance with the Convention and the adjudication of related criminal cases (art. 47).
- Consider establishing joint investigations also with States parties to the Convention that are not covered by the Criminal Justice (Joint Investigation Teams) Act 2004, as amended (art. 49).
- Ensure the use of controlled delivery and other special investigative techniques within the context of international cooperation with regard to all States parties to the Convention (art. 50, para. 1).

- With regard to States parties not covered by the Criminal Justice (Mutual Assistance) Act 2008, ensure the use of special investigative techniques on a case-by-case basis (art. 50, para. 3).

- Consider allowing the use of controlled delivery to include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part (art. 50, para. 4).

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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Cook Islands

1. Introduction: Overview of the legal and institutional framework of the Cook Islands in the context of implementation of the United Nations Convention against Corruption

The United Nations Convention against Corruption entered into force for the Cook Islands on 16 November 2011 in accordance with article 68 (2) of the Convention. The Cook Islands deposited its instrument of ratification with the Secretary-General on 18 October 2011.

The Cook Islands is a unitary state with a parliamentary type of government based on the Westminster model.

The legal system of the Cook Islands is common-law based.

The Cook Islands implements the provisions of the Convention through domestic legislation. The Convention cannot be applied directly in the absence of corresponding provisions in the domestic legislation.

The Cook Islands has created a special Anti-Corruption Committee that includes the Solicitor-General, the Commissioner of Police, the Head of the financial intelligence unit, the Director of the Cook Islands Audit Office, the Financial Secretary of the Ministry of Finance and Economic Management, the Public Service Commissioner, the Chief of Staff of the Office of the Prime Minister and the Ombudsman.

Some of the anti-corruption measures implemented by the Cook Islands were assessed in the course of the 2009 mutual evaluation of the Asia/Pacific Group on Money Laundering (APG), of which Cook Islands is a member.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized in section 116 of the Cook Islands Crimes Act (Crimes Act 1969). Specific provisions with aggravated punishment for the bribery of certain types of public officials are contained in section 111 on judicial corruption, section 112 on bribery of judicial officers, section 113 on corruption and bribery of the Minister of the Crown, section 114 on corruption and bribery of members of the Legislative Assembly and section 115 on corruption and bribery of law enforcement officers.

Section 4 (1) of the Secret Commissions Act 1994-1995 stipulates that certain gifts, according to relevant customs, may be recognized as legal if "the Court is satisfied that such custom tradition, practice or usage is honest and reasonable", which may create difficulties in the application of bribery provisions.

Sections 4 and 5 of the Secret Commissions Act criminalize bribery of agents where such "gifts" are given corruptly and are applicable to bribery in both the public and private sectors. The concept of agents is broadly construed and covers Government

officials and persons with managerial functions in private sector entities. Although persons with managerial functions are covered as subjects of the offence, general employees of private sector entities cannot be prosecuted for similar violations.

Bribery of foreign public officials and trading in influence are not criminalized in the current legislation.

Money-laundering, concealment (arts. 23 and 24)

The Cook Islands has legislatively implemented all the required elements of the offence of money-laundering as stipulated by article 23 of the Convention via section 280A of the Crimes Act.

More specifically, subparagraph (a)(i) of article 23 of the Convention is implemented via section 280A 2(b) of the Crimes Act.

Subparagraph (a)(ii) is implemented via section 280A 2(c) of the Crimes Act.

Subparagraph (b)(i) is implemented via section 280A 2(a) of the Crimes Act.

Subparagraph (b)(ii) is implemented via section 280A 2(d) of the Crimes Act in the part of aiding. Additionally, general provisions of the Crimes Act on participation, abetting, counselling (sections 68and 72 of the Crimes Act) attempt (section 334 of the Crimes Act) and conspiracy (section 333 of the Crimes Act) also apply to the offence of money-laundering.

Section 280A (1) provides that a predicate offence for the purposes of money-laundering is an act or omission for which the penalty is not less than 12 months imprisonment or a fine of $5,000 which covers all the offences established in accordance with the Convention under the Cook Islands law.

Section 280 A (1) (b) contains a dual criminality requirement applicable to predicate offences committed abroad.

Self-laundering is criminalized pursuant to section 280A (2) (c).

Most of the elements of concealment are covered by section 280A (2) (a) of the Crimes Act.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The legislative provisions of the Cook Islands criminalizing embezzlement are applicable to both the public and private sectors and include sections 242, 244, 246 and 249 of the Crimes Act.

Section 246 can be used to prosecute embezzlement, diversion and misappropriation of immovable property when such is committed via the illegal use of documents providing for legal rights over such property. Other relevant provisions include "crimes resembling theft", i.e., sections 250, 251A and 255 and "fraud", i.e. section 274.

The Cook Islands has not considered establishing abuse of functions as a separate criminal offence.

The Cook Islands has not considered establishing illicit enrichment as a separate criminal offence.

Obstruction of justice (art. 25)

The Cook Islands has partially criminalized the offence of obstruction of justice.

Interference with giving testimony or production of evidence are addressed in section 128 of the Crimes Act.

The elements promise or offering of undue advantage are covered by the wording of "dissuades or attempts to dissuade a person by... bribes" in section 128 (a); the use of physical force and threats or intimidation are covered by the wording of "wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice" in section 128 (e) of the Crimes Act as explained by the Cook Islands.

Section 75 of the Police Act 2012 criminalizes assault of police officers, which, according to the explanation provided by the Cook Islands, would also include "the use of physical threats, threats or intimidation" as required by the provision under review.

Liability of legal persons (art. 26)

The definition of "person" under the Crimes Act also covers legal persons, which implies that legal persons can be held liable for all the offences stipulated in the Crimes Act, including the corruption offences. However, there is no established court practice on that matter.

Section 280A (5) of the Crimes Act separately provides for increased punishment (five times $50,000) in cases where a person convicted of money-laundering is an incorporated body. Additionally, a separate penalty is stipulated for a body corporate (fine not exceeding $100,000) for corruption violations under the Secret Commissions Act 1994-1995 (section 13).

Legal persons can also be held civilly and administratively liable based on the applicable common law principles. However, there is no established case law in that area, particularly with regard to corruption offences.

Participation and attempt (art. 27)

The Crimes Act stipulates the liability of accomplices (section 68 (b)) and assistants and instigators (section 68 (c) and (d)). The Crimes Act also separately criminalizes conspiracy (section 333).

Attempts to commit an offence are also separately criminalized (section 74 and section 334).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Corruption offences are mostly punished with imprisonment in the Cook Islands. Offences of money-laundering and assault on police can also be punishable by fines.

In the Cook Islands functional immunity is applicable only to members of Parliament and employees of Office of the Ombudsman.

The discretionary legal power to prosecute is an exclusive prerogative of the Commissioner of Police of the Cook Islands. The Crown Law Office provides advice on whether there is sufficient evidence to prosecute.

Section 87 (3) of the Criminal Procedure Act 1980-1981 imposes a condition that a defendant who has been granted bail shall personally attend the hearing.

Section 6 of the Criminal Justice Act provides for the power of the High Court to impose probation.

Early release from imprisonment is possible by a decision of a parole board that needs to take into account the class of sentence imposed on the offender and the term of such sentence.

No provisions exist in the criminal legislation of the Cook Islands requiring the suspension, removal or reassignment of a public official accused of a corruption offence, as that would be contrary to the right to a fair trial under the criminal law doctrine of the Cook Islands.

Part 12 "Immunities from Prosecution" of the New Zealand Prosecution Guidelines adopted by the Cook Islands provide detailed requirements under which immunity from prosecution can be granted to a person who provides evidence.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Cook Islands does not have detailed provisions on the protection of witnesses, experts and victims. Section 67 of the Police Act 2012 provides for the protection of the identity of witnesses under police protection programmes.

There is no legislation in place providing protection against unjustified treatment for reporting persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The Proceeds of Crime Act 2003 (POCA) and the Proceeds of Crime Amendment Act 2004 provide for the mandatory application by the Solicitor General of a forfeiture order against tainted property of the accused and/or a pecuniary penalty order against the accused for benefits derived by him/her from the commission of the offence (section 11 (1) of the POCA, section 3 of the Proceeds of Crime Amendment Act 2004). Value-based confiscation is possible as "a payment to the Crown" (section 33 of POCA). All types of confiscation are strictly based on the conviction of the accused of "serious offences".

"Tainted property" is property used in or intended to be used in or in connection with a serious offence, or proceeds of that offence (section 3 (1) of POCA). "Proceeds" of an offence means property into which any property derived or realized directly from a serious offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the commission of the offence, whether the property is situated in the Cook Islands or elsewhere (section 3 (1) of POCA,). "Serious offences" include all offences that are punishable by imprisonment for not less than 12 months or the imposition of a fine of more than $5,000 (section 3 (1) of the Act), which covers all the relevant offences, implementing the requirements of chapter III.

Identification and tracing can be conducted by police based on search warrants issued under sections 35 (1) and 85 of POCA. The court may also require financial institutions to produce "property tracking documents" based on the application by a

police officer (section 79 of POCA). Section 87 of POCA allows the Solicitor General to apply to the Court for monitoring orders for financial institutions.

Freezing can be conducted based on section 50 of POCA. Seizure can be done based on section 43.

Besides the provisions of the Act, the provisions of the Criminal Procedure Act 1980-1981 (section 96) can be used additionally to identify and seize the proceeds of crime.

The Solicitor General acts as administrator of the seized, restrained and forfeited property (sections 3, 40, 46 and 54 of POCA). The Attorney General may also appoint another person to act as administrator (section 102 of POCA).

The Financial Transactions Reporting Act 2004 (FTRA) gives powers to the financial intelligence unit to request information from financial institutions and share it with law enforcement authorities (section 30 of the Act). Bank secrecy laws have been superseded by the FTRA (section 35).

Rights of bona fide third parties are afforded protection by sections 20 and 53 of POCA.

Statute of limitations; criminal record (arts. 29 and 41)

The Cook Islands legislation does not provide for statutes of limitations for any criminal offence including corruption offences.

The Cook Islands does not have specific provisions on taking into consideration any criminal record from abroad. However, in actual court practice previous convictions are accepted as aggravating factors during sentencing.

Jurisdiction (art. 42)

The Cook Islands criminal jurisdiction covers the cases where at least some part of offence was committed in its territory (section 6 of the Crimes Act). The jurisdictions also extends to the acts committed on board of any ship belonging to the country that is part to the British Commonwealth and on board of any Cook 'slands aircraft (section 7 (1) (a) and (b) of the Crimes Act).

Additionally, in cases of money-laundering committed abroad where offenders are ordinarily residents in the Cook Islands or corporations registered in the Cook Islands, they may also be held liable based on section 7A of the Crimes Act and with the consent of the Attorney General based on section 7B of the Act.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

A contract would be viewed as illegal in the Cook Islands if it was entered to by means of corruption based on the common law principles and Illegal Contracts Act 1987.

The Crimes Act allows for the compensation to the victims of offences (including corruption offences) in the criminal proceedings (sections 415 and 416). Additionally, the victims can request compensation in the civil proceedings.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The Cooks Islands has created an Anti-Corruption Committee consisting of the representatives of the Solicitor General, the Commissioner of Police, Head of the financial intelligence unit, Director of the Cook Islands Audit Office, Financial Secretary of the Ministry of Finance and Economic Management, Public Service Commissioner, Chief of Staff of the Office of the Prime Minister and the Ombudsman. Information regarding possible corruption offences is exchanged between the Committee members regularly in due course.

The Cook Islands considers establishing a specialized anti-corruption authority in the future by giving additional powers to the Ombudsman Office.

FTRA requires a wide range of private sector actors including financial institutions (section 2) to report to the financial intelligence unit information on suspicious transactions relevant to the commission of "serious offences", which also include corruption offences (section 11).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- Criminalization of active and passive bribery of electors or any persons in order to induce such persons to procure or endeavour to procure favourable vote, as a practice conducive to the fight against corruption;
- The adoption of the comprehensive Proceeds of Crime Act providing detailed regulation of different aspects of freezing, seizure and confiscation of illicit assets;
- The creation of the Confiscated Assets Fund managed by the Financial Secretary and the Ministry of Finance to administer the money paid as a result of pecuniary penalty orders or paid by foreign jurisdictions;
- The effective system of sharing operational information within the framework of the Combined Law Agencies Group (GLAG) between the Cook Islands law enforcement authorities as a good practice conducive to the efficient fight against corruption.

2.3. Challenges in implementation

It is recommended that the Cook Islands:

- Continue providing clarifications on the distinctions between "gifts" and "undue advantages" in legislation and/or sentencing guidelines;
- Harmonize the definition and categories of public officials in accordance with article 2 of the Convention and ensure that active bribery of all types of such officials is criminalized; in particularly, bribery of the employees of public companies or companies with the state participation, as well as the bribery of the persons providing public services;
- Criminalize the active bribery and consider criminalizing the passive bribery of foreign public officials and officials of public international organizations in accordance with article 16 of the Convention;

- Consider clearly criminalizing active and passive bribery of any person who works in any capacity for a private sector entity in line with article 21 of the Convention;
- Explicitly indicate the theft by public officials as an aggravating element to be taken into account while issuing sentences to convicts in sentencing guidelines for judges;
- Consider criminalizing the trading in influence in line with article 18 of the Convention;
- Consider criminalizing abuse of functions as a separate offence in line with article 19 of the Convention;
- Consider introducing national system of asset and conflict of interest declarations and their verification;
- Explicitly criminalize the use of physical force to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in line with article 25 of the Convention;
- Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice; and consider more clearly stipulating the elements of the use of physical threats, threats or intimidation or any member of Police in the Police Act 2012 as required by article 25(b) of the Convention;
- Provide clear and proportionate sanctions in the Crimes Act for the commission of corruption offences when the convicted persons are incorporated bodies (that could be similar to the sanctions in section 280A) in line with article 26 of the Convention;
- Clearly stipulate that legal person's liability shall be without prejudice to the criminal liability of natural persons who have committed the offence;
- Consider including clear guidance on the sanctions applicable to incorporated bodies for participation in corruption offences in sentencing guidelines for judges;
- Adopt sentencing guidelines providing standards for judges in the process of issuing verdicts, particularly, in the cases involving corruption offences;
- Ensure that in the future there are clear guidelines in place that provides the reasons based on which the Attorney General can refuse its endorsement of prosecution based on section 117 if the Crimes Act;
- Consider establishing procedures for the disqualification in line with article 30 (7) of the Convention;
- Take additional measures, particularly, in its legislation to encourage persons who participate or who have participated in the commission of corruption offences to supply information and provide help to competent authorities in line with article 37 (1) of the Convention;
- Consider explicitly including the provision on the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of a corruption offence in the

relevant legislation and/or sentencing guidelines in line with article 37 (2) of the Convention;

- Consider extending immunity from prosecution to the cases where persons provide substantial cooperation during the investigation of a corruption offence proceed in line with article 37 (3) of the Convention;
- Introduce detailed legislative provisions providing effective protection for witnesses, experts and victims who give testimony concerning offences in line with the requirements of article 32 of the Convention;
- Consider incorporating in the domestic legal system measures against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning corruption proceed in line with article 33 of the Convention;
- Consider including in the domestic legislation the requirement to consult with foreign counterparts as stipulated in paragraph 5 of article 42 of the Convention;
- Include more detailed provisions on making corruption a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession in relevant domestic legislation; particularly, in the Tender and Procurement Act;
- Finalize the process of the creation of the independent specialized anti-corruption authority and ensure its independence, as well as the adequate capacity of its staff proceed in line with article 36 of the Convention;
- Consider adopting legislative provisions requiring public officials to report suspected instances of corruption to the authorities responsible for anti-corruption law enforcement;
- Continue making more targeted efforts to encourage citizens to report on corruption offences, as well to raise general awareness of the public of the problem of corruption and powers of relevant anti-corruption authorities in line with article 39 (2) of the Convention;
- Harmonize the definition of "proceeds" in (section 3 (1) of POCA) in accordance with article 2 of the Convention to ensure it covers any property derived from or obtained, directly or indirectly, through the commission of an offence;
- Consider the need to adopt legislative measures to better implement article 41 of the Convention.

2.4. Technical assistance needs identified to improve implementation of the Convention

The following technical assistance needs were identified:

- Summary of good practices/lessons learned; model legislation, legislative drafting; legal advice; on-site assistance by an anti-corruption expert in relation to embezzlement;
- Summary of good practices/lessons learned in relation to trading of influence;

- Summary of good practices/lessons learned; legislative drafting in relation to abuse of functions;
- Summary of good practices/lessons learned; legislative drafting in relation to illicit enrichment;
- Summary of good practices/lessons learned; legislative drafting in relation to bribery in the private sector;
- Summary of good practices/lessons learned; legislative drafting; independent in-country expert assistance working with national counterparts, in particular, in investigating money-laundering offences in relation to money-laundering;
- Summary of good practices/lessons learned and legislative drafting in relation to obstruction of justice;
- Analysis of the current situation, mapping out the existing penalties in order to ensure they are proportionate and can act as important deterrent against commission of offences in relation to liability of legal persons;
- Summary of good practices/lessons learned; legislative drafting in relation to prosecution and sanctions;
- Summary of good practices/lessons learned and legislative drafting in relation to cooperation with law enforcement authorities;
- Summary of good practices/lessons learned and capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection;
- Summary of good practices/lessons learned and legislative drafting in relation to protection of reporting persons;
- Enhancement of existing resources in relation to specialized authorities and cooperation between national authorities.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons, transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the Extradition Act 2003 (EA). This applies to Commonwealth countries, Pacific Island countries and comity countries. A "backing of warrants" procedure is in place for Pacific Island countries (part 4). The Cook Islands does not make extradition conditional on the existence of a treaty. However, an "extradition country" is defined as a Commonwealth country, a South Pacific country, a treaty country, or a comity country (section 4 (1)). Extradition matters in the Cook Islands are under the authority of the Crown Law Office but a formal request would come through diplomatic channels (i.e. the Minister for Foreign Affairs). No extradition requests have been sent or received in the last 5 years. The Convention cannot be used as a legal basis.

Extradition is subject to dual criminality (section 5) and is limited to the extent that not all offences under the Convention have been criminalized. The minimum

penalty requirement is imprisonment for not less than 12 months or the imposition of a fine of more than $5,000.

The general extradition procedures from the Cook Islands are outlined in part 2, including provisional arrest warrants (sections 8-9); however, the requirements differ to Commonwealth countries (part 3), South Pacific countries (part 4, noting that the "backing of warrants" procedure applies: ss.29-30), treaty countries (part 5) and comity countries (part 6).

The Attorney General can refuse to order the surrender of a person based on that person being a national of the Cook Islands (section 62 (2) (a)); pursuant to section 62, the Cook Islands will submit the case for prosecution. However, the Cook Islands may also surrender the person sought to the requesting State for the purpose of trial only as long as the requirements of section 64 are met. It was explained during the country visit that if a foreign State were to apply to the Cook Islands to consider the enforcement of a sentence, then the Cook Islands would entertain the application.

Extradition proceedings must be conducted in the same manner as criminal proceedings (section 15 (1)). Fundamental human rights and freedoms are guaranteed in the Constitution (art. 64). The Attorney General would refuse to order the surrender of a person if "the person may be prejudice at his or her trial, or punished, detained or restricted in his or her personal liability, because of his or her race, religion, nationality, political opinions, sex or status" (section 61 (2) (b)).

The Cook Islands would not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (section 5 (4)). A duty to consult with requesting States before refusing extradition is not specified in the EA, but followed in practice.

The Scheme for the Transfer of Convicted Offenders within the Commonwealth only applies to Commonwealth countries, but has not been used to date.

The transfer of criminal proceedings is not covered.

Mutual legal assistance (art. 46)

The Mutual Assistance in Criminal Matters Act 2003 (MACMA) provides the legal basis for mutual legal assistance (MLA) with the objects of the Act outlined in section 2. The Cook Islands does not make MLA conditional on the existence of a treaty (section 3 (2), Mutual Assistance in Criminal Amendment Act 2004 (MACAA)). As a member of the Commonwealth, the Cook Islands could, in principle, rely on the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, although there has been no experience in its application.

The Crown Law Office is the responsible authority for MLA, as has been notified to the Secretary-General of the United Nations; the Attorney General delegated his statutory obligations under the MACMA to the Solicitor General. However, requests would normally be received and sent through diplomatic channels. In the last two years, 21 requests have been received and responded to. Only one request has been sent by the Cook Islands to New Zealand and the information requested was sent. MLA is limited to the extent that not all offences established under the Convention have been criminalized, but would be equally applicable to legal persons.

MLA is broadly afforded by the Cooks Islands (parts 3-5, 7 and 8 of EA and in relation to production orders: ss.79-84, Proceeds of Crime Act 2003 (POCA)). As a matter of practice, competent authorities (e.g. the transnational crime unit, financial intelligence unit) proactively transmit information to a foreign competent authority, without a prior MLA request, where such information could assist in the investigation of offences. The Cook Islands complies with MLA requests where the said information is to remain confidential with restrictions in its use (sections 60-61, MACMA). While the Cook Islands is not prevented from disclosing in its proceedings information that is exculpatory to an accused person, the Crown Law Office would notify the transmitting State of this without delay. A Court (production) order is required to lift bank secrecy in relation to receiving requested information (section 8, MACAA).

Despite the dual criminality requirement of the Cook Islands (section 3, MACMA), the Government can take measures as may be necessary to ensure that MLA involving non-coercive measures is afforded in the absence of this requirement.

Part 5 of MACMA covers the arrangements for persons to give evidence or assist in investigations as required by the Convention, noting that consent is covered in sections 21 (2) (b) (iii) and 30 (d) (i), and immunities in section 23.

While an MLA is to be in writing or by e-mail (section 7 (2)), in urgent circumstances, where the Cook Islands have dealt with a foreign State before, an oral request may be considered; the official request is required prior to going to Court (e.g. for a production order). Requests have been made through INTERPOL.

The details of what an MLA request is to contain is covered in section 7 (2). As a matter of practice, MLA requests are executed in accordance with domestic law and where possible, in accordance with the procedures containing in the specific request. A hearing can also take place through a video or Internet link from the Cook Islands (section 10 (2) or the requesting State (section 14 (2)). Information being requested in an MLA request that is not available to the general public could be provided through an official letter or a Court order, depending on the nature of the information.

The grounds for refusing an MLA request are covered in section 9, noting that the Cook Islands would also refuse a request that involves matters of a *de minimis* nature. The Attorney General, after consulting with the foreign State, may postpone an MLA request as it "would be likely to prejudice the conduct of an investigation or proceeding in the Cook Islands" (section 9(b)). The ordinary costs of an MLA request would be borne by the Cook Islands; if the costs are of a substantial or extraordinary nature, the Government would consult with the foreign State.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The law enforcement authorities of the Cook Islands cooperate through regional and international agreements and arrangements, as well as on a case-by-case basis; a treaty or formal memorandum of understanding (MoU) is not a prerequisite.

The Transnational Crime Unit (TCU) cooperates internationally, not only through the Pacific Transnational Crime Network (PTCN), but also through other counterparts (including the New Zealand New Zealand Police and Australian

Federal Police). TCU cooperates with INTERPOL through the Pacific Transnational Crime Coordination Centre (PTCCC) situated in Samoa and through the New Zealand Police. Since its establishment, 5 TCU members have been seconded to the PTCCC.

Law enforcement cooperation is also carried out through other regional initiatives (e.g. Pacific Islands Chiefs of Police, Pacific Islands Forum Secretariat, Oceania Customs Organization, Pacific Patrol Boat Programme, Pacific Islands Law Officer's Network).

The financial intelligence unit (FIU) has informal connections with other FIUs (including AUSTRAC) and is involved in the Pacific Association of FIUs to share information. The FIU has been an EGMONT member since 2003.

The Cook Islands undertakes joint investigations with foreign States, namely New Zealand, Australia and the United States of America on a case-by-case basis. Joint prosecutions have also taken place. Appropriate bilateral arrangements on the use of special investigative techniques have been used on a number of occasions with New Zealand, Australia and the United States. Special investigative techniques have been used on a number of occasions with New Zealand, Australia and the United States. The Police Act and the Narcotics and Misuse of Drugs Act provide for wiretapping, but this has not been used in practice with regard to corruption offences.

3.2. Successes and good practices

Overall, the following success and good practice in implementing chapter IV of the Convention is highlighted:

- Cook Islands' international law enforcement cooperation, particularly in the region and joint investigations, especially with New Zealand and the United States.

3.3. Challenges in implementation

It is recommended that the Cook Islands:

- The Cook Islands could grant extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law;
- The Cook Islands could grant extradition requests that include several separate offences, one of which is extraditable, also for the other offences that are not extraditable;
- Recognize all the Convention offences as being extraditable offences;
- The Cook Islands may wish to also consider using the Convention as a legal basis for extradition to entertain extradition requests from States that require a treaty-basis;
- Consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for extradition and mutual legal assistance requests to be dealt with efficiently and effectively;

- The Cook Islands may wish to consider entering into bilateral or additional multilateral agreements or arrangements on the transfer of convicted persons for offences related to the Convention;
- Notify the Secretary-General of the United Nations of the acceptable language for executing MLA requests;
- Ensure that MLA is not refused on the sole ground that the offence is also considered to involve fiscal matters through legislative measures;
- Consider the possibility of transferring criminal proceedings to and from a foreign State it were in the interests of the proper administration of justice, in particular where several jurisdictions are involved.

3.4. Technical assistance needs identified to improve implementation of the Convention

- The Cook Islands indicated that on extradition and MLA, it would require technical assistance, including: a summary of good practices/lessons learned (in particular from other Small Island States); the sharing of experiences on how other such States deal with international cooperation; legislative drafting; extradition templates/precedence that can apply to incoming requests, pursuant to the EA;
- On transfer of sentenced persons and criminal proceedings, the requested technical assistance included a summary of good practices/lessons learned and legislative drafting;
- On law enforcement cooperation and special investigative techniques, the technical assistance requested included capacity-building programmes for authorities responsible for cross-border law enforcement cooperation, for designing and managing the use of special investigative techniques and for international cooperation in criminal/investigative matters, as well as the enhancement of existing resources.

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II. Executive summary

Madagascar

1. Introduction: Overview of the legal and institutional framework of Madagascar in the context of implementation of the United Nations Convention against Corruption

The Republic of Madagascar signed the Convention on 10 December 2003 and ratified it on 22 September 2004.

Madagascar rejoined the African Union in 2014, after a suspension of five years because of political and institutional instability. Madagascar has a semi-presidential regime, with the President of the Republic as Head of State, and a Prime Minister as the head of the executive. The legislative power is composed of the National Assembly and the Senate.

Madagascar has a civil law system with the Constitution as the supreme law. Conventions, once ratified, form part of the legal system, and rank under the Constitution but above legislation. The judiciary has, below the Constitutional Court at the top, three branches (ordinary, administrative and financial) headed by the Court of Cassation, the Council of State and the Court of Auditors respectively.

With regard to the criminal process, investigations are led by the Prosecutor's Office, which also brings accusations in court and has to maintain an objective role during trial before the courts and tribunals. The preliminary criminal investigation in corruption matters is under the main responsibility of the Bureau indépendant anti-corruption (BIANCO) and the criminal police.

The main anti-corruption institutions are the BIANCO and the Comité de Sauvegarde de l'Intégrité (CSI). The main anti-corruption legislation is contained in the anti-corruption Law No. 2004-030 and the anti-money-laundering Law No. 2004-020. A circular of the Ministry of Justice regulates criminal policy in anti-corruption matters.

At the time of the country visit, Madagascar was establishing a crime statistics system and was in consultations on the adoption of a National Anti-Corruption Strategy.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery is regulated in article 177.1 of the Penal Code (Code Pénal, (CP)), and a provision on gifts in article 183 CP. Passive bribery is regulated in article 177 CP. The active bribery of foreign officials and officials of international organizations is criminalized in article 177.2 CP, but there is no provision for passive bribery of these officials.

Madagascar does not have a single definition of public officials. The bribery provisions include a broad definition that covers members of Parliament as well as

judges or CEOs of public enterprises. However, other offences use different wording.

The "giving" of an advantage and third-party beneficiaries are not explicitly mentioned in the law.

Active and passive trading in influence are criminalized in 179 CP, which does not envisage third-party beneficiaries. Article 177.1, No. 3 (active bribery), also covers active trading in influence when the person abusing his/her influence (the intermediary) is a public official. The range of punishment in article 177.1, No. 3, and 179 CP is different.

Article 21 is implemented only in its passive form through article 178 CP. It covers managers, shareholders and employees as well as members of liberal professions and does not cover third-party beneficiaries.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in articles 1, 2, 3, and 30 to 35 of Law No. 2004-020 and is an autonomous offence.

Madagascar applies an "all crimes approach", including as predicate offences all offences, including those committed abroad. Those committed abroad must constitute a criminal offence in both countries, "unless it has been agreed to otherwise". Such an exception could be created by treaty, although no such agreement exists yet. The offender himself may also be the perpetrator of the predicate crime.

Concealment is criminalized in articles 460 and 401 CP.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is regulated in article 169 CP. The offence is already committed with the act of diversion, so it is irrelevant who the beneficiary of this offence is.

Article 19 is implemented through article 179.1 CP.

Madagascar has criminalized illicit enrichment in article 183.1 CP with regard to all public officials. Certain officials have the obligation to declare assets annually (art. 1 and 2 of Law No. 2004-030, Decree No. 2004-983).

Embezzlement in the private sector is criminalized by articles 379, 401, 406, 408 CP and article 931 of the Commercial Companies Code.

Obstruction of justice (art. 25)

Article 25 (a) is implemented through article 365 CP. It covers all means of obstruction of justice described, but only to induce false testimony, not to interfere in the giving of testimony or the production of evidence.

Article 25 (b) is implemented though article 27 of Law No. 2004-030, on obstructing the investigative efforts of the Director General of BIANCO, which is interpreted as referring to the entire institution. This provision does not include interference with the exercise of duties of other judicial or law enforcement officials.

Liability of legal persons (art. 26)

Madagascar regulates criminal liability of legal persons in article 32 of Law No. 2004-020, which allows the imposition of a fine five times as high as the one for natural persons. There is no general regime for the criminal liability of legal persons, but confiscation as an accessory criminal sanction is also applied with respect to property owned by legal persons (art. 16 of Law No. 2004-030).

Administrative liability is foreseen in article 17(2) of Law No. 2004-030 and articles 9 and 54 of the Public Procurement Code, which provide for mandatory debarment of companies from public procurement.

With regard to civil liability, Madagascar considers as a general principle of law that a legal person is liable for the conduct of its representatives.

Participation and attempt (art. 27)

Article 27 (1) is implemented through articles 59 and 60 CP. Accomplices are generally punished like the authors of the crime. The general rule about attempt is regulated in articles 2 and 3 CP. Attempt to commit a "*délit*" (misdemeanour) is only criminalized where provided for in law. Convention offences are *délits*, except for money-laundering and embezzlement, and do not provide for the criminalization of attempt. The preparation for a corruption offence is not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Sanctions for corruption offences in Madagascar range from fines to long imprisonment. Some sanctions in the law are not applied any more, for example, forced labour is transformed into imprisonment.

The immunities of the members of Parliament, as well as the procedures to lift them, are regulated in article 73 of the Constitution. Investigative steps can be taken during the procedure for lifting immunities. The President also enjoys immunity (art. 131 of the Constitution). Magistrates benefit from procedural privileges pursuant to articles 512 and 513 of the Criminal Procedure Code (CPC).

Prosecution is not mandatory; however, a circular of the Ministry of Justice on money-laundering requests prosecutors to exercise the opportunity principle with a view to enhancing the effectiveness of law enforcement. The decision of the prosecutor to prosecute or not can be judicially reviewed.

Madagascar's CPC contains regulations on alternatives to provisional detention (arts. 342-350) and on early release or parole (arts. 574- 578).

Public officials accused of corruption can be suspended and reassigned as a matter of practice by a discretionary administrative decision. The removal of an official accused but not convicted of a corruption offence is considered unconstitutional.

As an accessory sanction, offenders can be declared ineligible to exercise public functions for a period of at least two years (arts. 180, 180.1 and 172 CP). This includes holding office in an enterprise owned in whole or in part by the State.

Madagascar has a disciplinary system regulated by its Civil Service Statute; article 43(3) clarifies that disciplinary and criminal proceedings are independent.

The Decree on the Administration of the Penitentiary System (2005) contains provisions on the reintegration into society of convicted offenders.

Madagascar has implemented article 37 of the Convention through article 180.2 CP and article 161 CPC, which provide for the mitigation of or exemption from punishment for cooperating offenders.

Protection of witnesses and reporting persons (arts. 32 and 33)

The protection of witnesses and whistle-blowers is provided for in articles 32 to 35 of Law No. 2004-030, which establish some of the relevant measures, for example, the protection of identity. Law enforcement agencies can provide physical protection but they lack sufficient financial resources to carry out this function at the expense of the State. Evidentiary rules for witness protection are applied as a matter of practice. The legislation does not apply to experts. A witness protection programme has not yet been established. Victims have standing in the criminal process when they ask for reparation, but not generally to express their concerns.

Reprisals against whistle-blowers or witnesses are forbidden. BIANCO is responsible for protecting their identity. Whistle-blowers may file written complaints with BIANCO, and BIANCO can thereupon approach the competent authority, which may take measures such as reinstating or reimbursement (arts. 32-35, Law No. 2004-30).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Madagascar has regulated conviction-based confiscation as an accessory sanction for specific offences in the Penal Code (for example in art. 183.2 CP). In article 16 of Law No. 2004-30, there is a general authorization for, inter alia, confiscation in all corruption cases, without further detail.

Articles 36 and 37 of Law No. 2004-20 establish conviction- and non-conviction-based confiscation for money-laundering. Object-based confiscation is the rule, but value-based confiscation is possible in a subsidiary way. These provisions refer to the "object" of the offence or its value, not explicitly to the instrumentalities used in or destined for use in its commission.

The prosecutor and the investigating judge can seize and freeze assets (arts. 133-135, 210-212 and 260-261 CPC and arts. 28 and 29 of Law No. 2004-20).

Madagascar has a basic regulation on the administration of seized assets in article 260 CPC; however, it has not yet established an institutional structure.

With regard to money-laundering, all relevant measures can be taken when proceeds are transformed into other property or intermingled with property of legitimate sources, and with regard to income and other benefits derived from proceeds of crime.

Property belonging to a person convicted of a money-laundering offence or to his family members can be confiscated unless they can establish its lawful origin.

The rights of bona fide third parties are protected in articles 261 CPC and 36 No. 1 of Law No. 2004-20.

According to article 24 of Law No. 2004-030, BIANCO can inspect and request documentation on the accounts held with banks or other financial institutions by the suspect and his family members. Article 27 of the same Law No. 2004-020 gives the judicial authorities the power to overcome bank secrecy in money-laundering investigations.

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitation for crimes is 10 years and for misdemeanours 3 years, from the date of commission, if no investigative actions or prosecution have been carried out in the meantime (art. 3 CPC). Therefore, the period prescribed for money-laundering and embezzlement is 10 years and for the other corruption offences 3 years. Evasion of justice is not a reason for suspension.

Madagascar has not implemented article 41.

Jurisdiction (art. 42)

Madagascar has established its jurisdiction for offences committed in its territory (art. 27, Ordonnance 62-041), but not on board a Malagasy vessel or aircraft.

Jurisdiction has also been established for offences committed by Malagasy citizens and offences committed against the security of the State (art. 507 CPC) and, upon request of the prosecutor, for those committed against Malagasy citizens (art. 508 CPC).

The jurisdiction to prosecute Malagasy citizens in lieu of extradition is assumed as a general principle.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Article 17, paragraph 1, of Law No. 2004-030 foresees that any contract, licence, permit or authorization obtained by corrupt means is automatically void.

Civil action for the compensation of damage can be pursued within the criminal proceedings according to articles 182-183 and 192-193 CPC.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The law enforcement authorities investigating corruption are BIANCO, the police, the gendarmerie and the investigation units within the specialized Chaîne Pénale Anti-corruption (CPAC).

The independence of BIANCO is according to the law guaranteed by the security of the positions of its officers, the availability of sufficient resources, and the autonomy of its operations. The powers of BIANCO are set out in articles 22-30 of Law No. 2004-030.

CPAC is a system of specialized anti-corruption investigators, prosecutors and courts. It does not yet operate exclusively for corruption offences. Conversely, not all cases involving corruption are handled by CPAC. Unlike BIANCO, CPAC does not have a national competence.

Article 14 of Law No. 2004-020 and Decree No. 2007-510 provide for the establishment of a Financial Intelligence Unit (FIU - SAMIFIN).

The Director General of BIANCO has the power to directly ask for the support of all law enforcement agencies (art. 23(5) of Law No. 2004-030). BIANCO and other law enforcement agencies can exchange officers with special know-how. BIANCO has memorandums of understanding with SAMIFIN and the Ministry of Justice.

Instructions given to prosecutors are not recorded in writing.

BIANCO has cooperation with the private sector, including the chamber of commerce, in the area of prevention and education. The FIU provides training and meets regularly with reporting entities.

Complaints are received, also anonymously, by BIANCO, the police and the gendarmerie. BIANCO cooperates with Transparency International Madagascar, which provides a hotline for complaints, and plans to set up a website for the reporting of corruption offences.

2.2. Successes and good practices

The following successes and good practices are highlighted:

- The possibility to take investigative steps before the lifting of immunity (art. 30(2)).
- The protection of whistle-blowers in article 35 of the anti-corruption Law No. 2004-030, which provides for a complaint procedure that may result in measures such as reinstating the whistle-blowers in their position or reimbursing them for damages (art. 33).
- The procedure on the compensation of damage, which can be initiated by a verbal statement of the victim and even ex officio (art. 35).

2.3. Challenges in implementation

While noting Madagascar's efforts in the field of anti-corruption, it is recommended that Madagascar:

General part

- Define the term "public official" in accordance with article 2, subparagraph (a), of the Convention, and consistently use this term throughout the CP.
- Continue efforts to establish a national system of crime statistics disaggregated by offence, state of the process and outcome.
- Update the system of sanctions in the CP and abolish those sanctions that are not applied anymore.

Criminalization and law enforcement

- Include explicitly third-party benefits and the "giving" of an undue advantage in all bribery offences; more clearly delineate the elements of the provisions criminalizing active bribery (art. 177.1 and art. 183, para. 2 CP) with a view to avoiding overlaps between them (arts. 15 and 16, para. 1).
- Consider criminalizing passive transnational bribery (art. 16, para 2).

- Clarify that the investigation of embezzlement as a Convention offence should fall within the competence of BIANCO (art. 17).
- Consider including third-party benefits in trading of influence offences, consider explicitly mentioning the "giving" of an undue advantage, and consider harmonizing the provisions on trading in influence (art. 177.1, No. 3, and art. 179 CP) (art. 18).
- Taking into account the existing considerations regarding criminalizing active bribery in the private sector, further pursue the criminalization of this conduct (art. 21, subpara. (a)).
- Consider including third-party beneficiaries in bribery in the private sector (art. 21, subpara (b)).
- Consider making embezzlement in the private sector a distinct offence (art. 22).
- Recognizing the general criminalization of money-laundering based on predicate offences committed abroad, abolish the possibility of waiving the principle of dual criminality by treaty with a view to enhancing legal security (art. 23, subpara 2 (c)); furnish copies of its relevant laws to the Secretary-General of the United Nations (art. 23, subpara 2 (d)).
- Criminalize obstruction of justice according to article 25, subparagraph (a), not only to induce false testimony, but also to interfere in the giving of testimony or the production of evidence (art. 25, subpara (a)).
- Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by all justice and law enforcement officials (art. 25, subpara (b)).
- Consider the introduction of criminal liability of legal persons for all corruption offences, and assess if the sanctions, especially the criminal fines foreseen for legal persons, are sufficiently effective and dissuasive (art. 26).
- Could criminalize attempt for all corruption offences (art. 27 para. 2).
- Establish a longer statute of limitations for corruption offences characterized as *délits*, and establish a possibility of suspending it or foresee a longer statute of limitations in the case of evasion of justice. Further, Madagascar may assess the possibility of introducing a regulation by which the statute of limitations for corruption offences starts with the discovery of the facts (art. 29).
- Consider whether the use of any discretionary powers could be guided by the adoption of a policy comparable to the one in the circular on criminal policy regarding money-laundering, with a view to maximizing the effectiveness of law enforcement measures (art. 30(3)).
- Adopt a comprehensive legislative regime in line with article 31 for the seizure, freezing and confiscation of proceeds and instrumentalities used in and instrumentalities destined for use in all corruption offences, and establish an institutional framework for the management of seized and confiscated assets (art. 31).

- Create consolidated witness protection legislation with regard to all criminal offences, and covering all measures described in the Convention, for witnesses and experts; to the extent necessary and feasible, institute a witness protection programme and provide financing for it; consider entering into agreements for the international relocation of witnesses; and take measures to enhance the role of victims during trial (art. 32).

- Establish strong coordination mechanisms between the various law enforcement bodies; take measures to ensure the independence of prosecutors, for example, by regulating that instructions to prosecutors must be given in writing; the new proactive approach of BIANCO to act ex officio was welcomed (art. 36).

- In the reform of the witness protection legislation, include the protection of collaborators with justice (art. 37, para. 4).

- Continue to encourage citizens to report offences, including through the establishment of hotlines (art. 39, para. 2).

- Could adopt legislation to allow the taking into account of previous convictions in other States (art. 41).

- Establish jurisdiction over offences committed on board national vessels or aircraft (art. 42, subpara. 1 (b)), consider establishing jurisdiction over participation in or attempt of money-laundering committed abroad (art. 42, subpara. 2 (c)), and consult with other States parties in the cases established in article. 42, paragraph 5. Madagascar could establish its jurisdiction over corruption offences when it does not extradite the alleged offender (art. 42, para. 4).

2.4. Technical assistance needs identified to improve implementation of the Convention

Madagascar indicated technical assistance needs in the context of the development and implementation of the National Anti-Corruption Strategy.

For criminalization, Madagascar requested legislative drafting assistance, including through on-site assistance by anti-corruption experts, for articles. 16, paragraph 2, 20, 21, subparagraph (b), 25, 26 and 29. For law enforcement, the same forms of technical assistance are sought on articles 30-34 and 37-39, and training on articles 31-33 and 37. Assistance in the establishment of crime statistics/databases was also mentioned.

Two areas were established as a priority:

(a) The provision of legislative assistance to fully criminalize all corruption offences;

(b) The establishment of a consolidated framework and programme for the protection of witnesses, experts and collaborators with justice; and on a related matter, the further development of measures to protect officials investigating corruption.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated in two bilateral, three regional and a number of multilateral treaties to which Madagascar is a party, and, in a subsidiary manner, in the Extradition Law (1927) and in Law No. 2004-020. At the time of the review, a draft law on international cooperation (extradition and mutual legal assistance) was being finalized.

Madagascar does not require a treaty for extradition, but can extradite on the basis of reciprocity or international courtesy. Madagascar considers the Convention a legal basis for extradition.

Extradition is based on the principles of dual criminality, proportionality and specialty. However, dual criminality is practised with a large measure of flexibility and determined based on the underlying conduct.

Extraditable offences are those with maximum sanctions of deprivation of liberty of at least two years, which includes some but not all Convention offences. Using the Convention as a legal basis, all Convention offences could be considered extraditable. If a person is sought for various offences, they are extraditable if the sum of their maximum penalties reaches two years.

Extradition is excluded for political offences. Money-laundering is not considered a political offence (art. 54, Law No. 2004-020); neither is corruption, according to general principles. Extradition for fiscal offences is not explicitly allowed.

Madagascar can arrest a person based on an INTERPOL red notice.

Based on article 5(1) of the Extradition Law, Madagascar does not extradite its nationals, while according to article 51(h) of Law No. 2004-020, nationality is an optional ground for refusal. Some of the treaties to which Madagascar is a party regulate the obligation to "extradite or prosecute" (for example, art. 2, para. 2, of the treaty with France) and the possibility of enforcing foreign sentences (for example art. 60 of the General Convention on Cooperation in Justice Matters between 12 States of the region).

The extradition procedure has a judicial and an administrative phase. Decisions cannot be appealed. A concern over discrimination is a mandatory ground for refusal pursuant to article 50 (b) of Law No. 2004-020. There is no legal obligation to consult with the requesting State before refusing a request.

Extradition proceedings have a duration of approximately two months. The Extradition Law provides for specific deadlines. A simplified procedure is foreseen in article 15 of the Extradition Law and article 61 of Law No. 2004-020 if the person sought agrees to the extradition, and in the two bilateral treaties through a direct procedure between the Ministries of Justice. The court only assesses the legal requirements for extradition, not the evidence on the commission of the offence.

A draft of a new extradition law at the time of the country review contained provisions on a number of relevant issues, including extradition for fiscal offences, an anti-discrimination clause and a right to appeal. It maintained the minimum

penalty requirement of two years and nationality as a non-mandatory ground for refusal.

Madagascar expressed its intention to negotiate additional bilateral treaties on extradition and mutual legal assistance, and to ratify the Southern African Development Community (SADC) Protocol against Corruption.

Madagascar has concluded three treaties on the transfer of sentenced persons.

Madagascar does not have legislation or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance is regulated in the above-mentioned bilateral and regional treaties, in article 253, paragraph 3, CPC, as well as in Law No. 2004-020. Madagascar can provide mutual legal assistance on the basis of the Convention, although there have been no cases yet.

Madagascar requires dual criminality as a matter of practice, and according to article 43(d) of Law No. 2004-020. In principle, mutual legal assistance in the absence of dual criminality could be afforded on the basis of the Convention.

Madagascar can provide assistance for all purposes foreseen in the Convention, also with regard to procedures against legal persons, to the extent that the required act is not contrary to domestic law. This includes procedures specified in the request (art. 44, Law No. 2004-020).

Madagascar has received information without prior request, which it can keep confidential according to general principles of law. It has not yet spontaneously transmitted information. Informal case coordination meetings for the preparation of mutual legal assistance requests are held especially in cases involving multiple jurisdictions or conflicts of competence.

The Ministry of Justice is the central authority. Requests are received in French and Malagasy through diplomatic channels unless otherwise regulated in a treaty. Some of the treaties to which Madagascar is a party allow direct transmission to the Prosecutor's Office. In urgent circumstances, requests can be received through INTERPOL, by fax or e-mail, but not orally.

The principles of confidentiality and specialty are regulated in articles 59 and 62 of Law No. 2004-020 and applied as general principles of law. Videoconferences for purposes of testimony have been held in practice and are contained in the draft legislation.

Mutual legal assistance cases in Madagascar take one year on average, and the easiest cases two to three months. A circular of the Minister of Justice in 2013 instructed officials to prioritize the timely execution of requests. The execution of requests according to deadlines suggested by the requesting State party and the provision of information on the status of a request are implemented in practice. Malagasy authorities gave examples in which they requested further information or consulted with the requesting party before refusing a request.

Article 43 of Law No. 2004-020 and the treaties to which Madagascar is a party contain grounds for refusal of mutual legal assistance that are largely in line with

the Convention. Banking secrecy cannot be invoked in this regard. However, Madagascar currently cannot provide assistance for fiscal offences; for corruption offences that involve fiscal matters it could in principle be done on the basis of the Convention. Article 43 of Law No. 2004-020 establishes that reasons have to be given when refusing assistance, and mutual legal assistance can be postponed if it interferes with domestic procedures. In some of the treaties to which Madagascar is a party, safe conduct for witnesses who give evidence at the request of the requesting State is guaranteed. There is no legislation on the costs of the execution of a request; Malagasy authorities confirmed that unless the parties agree otherwise, the costs are borne by the requested State party.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

BIANCO has cooperation agreements with its counterparts in Mauritius and France, and is developing cooperation with China and Malaysia. The police cooperate through INTERPOL, and SAMIFIN is a candidate FIU to the Egmont Group. In the region, most law enforcement cooperation is realized through the Judicial Regional Platform of the Indian Ocean Commission countries. The Platform also links Madagascar to further cooperation networks such as Eurojust, the European Judicial Network or the Sahel Judicial Platform.

Joint investigative teams can be formed on the basis of a treaty, including the Convention, or an ad hoc arrangement. Such teams have been established on the basis of the United Nations Convention against Transnational Organized Crime.

Madagascar applies all special investigative techniques mentioned in the Convention to money-laundering offences (arts. 25-26, Law No. 2004-020). In other matters, they can also be used in practice, without specific legal basis. They can be ordered by the Prosecutor-General. Electronic surveillance requires a judicial order and information gathered therefrom must be supported by other means of evidence in court. At the international level, there are no specific regulations in the relevant treaties, but Madagascar can use the techniques on the basis of the Convention or on a case-by-case basis and has already done so, although not yet in corruption offences.

3.2. Successes and good practices

- Madagascar is making efforts to adopt comprehensive legislation on extradition and mutual legal assistance (arts. 44, 46).
- Madagascar has an established practice to informally consult on mutual legal assistance requests before their formal submission (art. 46).
- Coordination meetings before the preparation of formal mutual legal assistance requests are held in cases involving multiple jurisdictions (art. 46).
- Madagascar actively engages in cooperation through the Judicial Regional Platform of the Indian Ocean Commission countries (art. 48).

3.3. Challenges in implementation

It is recommended that Madagascar:

- Continue its efforts to adopt comprehensive legislation on extradition and mutual legal assistance; ensure that such new legislation contains all elements regulated in the Convention (arts. 44, 46).
- Ratify the SADC Protocol and assess whether new bilateral treaties would further international cooperation (arts. 44, 46).
- Madagascar could grant extradition in the absence of dual criminality (art. 44, para. 2).
- Recognize all Convention offences as extraditable (art. 44, paras. 4 and 7).
- Clarify the law to the effect that corruption offences are not considered political offences (art. 44, para. 4).
- Inform the Secretary-General that it considers the Convention a legal basis for extradition (art. 44, para. 6).
- Regulate in its future reforms the principle "extradite or prosecute", and the enforcement of foreign sentences (art. 44, paras. 11 and 13).
- Allow for comprehensive judicial review of decisions on extradition, and for consultations with the requesting State before refusal of extradition (art. 44, paras. 14 and 17).
- Regulate generally concerns about discrimination among the reasons for refusal (art. 44, para. 15).
- Madagascar could transmit information to other States parties without prior request (art. 46, para. 4).
- Render assistance that does not involve coercive action in the absence of dual criminality; Madagascar could also render a wider scope of assistance even in the absence of dual criminality (art. 46, para. 9).
- Regulate the transfer of detained persons for the purposes of obtaining testimony and other evidence from and to Madagascar (art. 46, paras. 10-12).
- Review and, if appropriate, update the notification of the Secretary-General on the designation of its central authority, and assess whether direct receipt of requests by the central authority could contribute to swift and efficient cooperation (art. 46, para. 13).
- Madagascar could accept requests orally in urgent circumstances, on the understanding that they are confirmed in writing forthwith (art. 46, para. 14).
- Ensure that mutual legal assistance may not be refused on the ground that the offence involves fiscal matters (art. 46, para. 22).
- Execute mutual legal assistance requests as soon as possible and reduce the average time needed (art. 46, para. 24).
- Clarify the limits of confidentiality of documents that are not public, and the possibility of submitting them to a requesting party (art. 46, subpara. 29 (b)).

- Consider the possibility of transferring from or to other States parties criminal proceedings in cases where such transfer is considered to be in the interests of the proper administration of justice (art. 47).
- Explicitly regulate the appropriate use of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, to the extent permitted by the basic principles of the domestic legal system, for all Convention offences, and for their use in international cooperation (art. 50).

3.4. Technical assistance needs identified to improve implementation of the Convention

Madagascar indicated the following technical assistance needs:

In the short term, assistance was requested for the finalization of the draft international cooperation law.

In the medium term, specific technical assistance was needed for extradition and mutual legal assistance, including for:

- Strengthening institutions for implementing the new legislation.
- Developing international cooperation guidelines.
- Training law enforcement and judicial officials, including in international asset recovery.
- Disseminating good practices in international cooperation (arts. 44 and 46).

Further, Madagascar sought assistance for strengthening the active involvement of Madagascan officials in law enforcement and asset recovery networks (art. 48, para. 1).

Training and on-site assistance by an anti-corruption expert on offences committed through the use of modern technology and on special investigative techniques would also contribute to the full implementation of article 48, paragraph 3, and article 50.